Davis Polk

Federal Reserve proposes comprehensive modernization of Regulation O

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The Board proposal restates Regulation O in its entirety, quadruples the dollar thresholds by indexing them to nominal GDP, proposes a fix for passive fund complexes and begins the first implementation of the Dodd-Frank Act derivatives and securities financing transactions valuation requirements,16 years after enactment.

The Board of Governors of the Federal Reserve System (the Board) has issued a notice of proposed rulemaking (the Proposal) that comprehensively revises Regulation O, the rule governing extensions of credit by banks to their executive officers, directors, principal shareholders and to any company or any political or campaign committee controlled by these individuals or entities (collectively, insiders). In light of the extent of the changes, the first substantive update since 1979, the Board is proposing to restate and reorganize Regulation O in its entirety. The Board conducted a comprehensive review of Regulation O, including feedback received through Economic Growth and Regulatory Paperwork Reduction Act notices and public outreach meetings as well as consultations with the OCC and FDIC. Comments are due on or before October 5, 2026. The FDIC has also issued a similar companion notice of proposed rulemaking for state nonmember banks.

Key takeaways

- **Dollar thresholds increase fourfold and are indexed going forward.** All five dollar based thresholds, unchanged since 1994, each increase by a factor of four and would be recalculated every five years based on cumulative nominal GDP growth.

- **A fix for passive fund complexes**. Certain portfolio companies of a “qualified fund complex” are carved out of Regulation O’s presumption of control and therefore are not presumed to be a related interest of the qualified fund complex. To qualify, the fund complex must meet criteria designed to ensure its relationship with the bank is sufficiently passive. The Board proposes using this exemption from the presumption of control as it cannot alter the statutory principal shareholder threshold.

- **Dodd-Frank Sections 614 and 615 implemented at last.** The Proposal defines how to value credit exposure arising from derivatives and securities financing transactions and incorporates the market terms and board approval requirements for asset purchases and sales between a bank and an insider.[1] The Board notes that it would likely use the same concepts in the long awaited post Dodd-Frank revisions to Regulation W.

- **The home mortgage exception for executive officers is tightened.** The Proposal modifies the existing exception for executive officers so that it is used only for a single residence and requires that the executive officer live there for at least three months a year.

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- **The executive officer presumptive title list is modernized.** The presumptive title list, essentially unchanged since 1935, is updated to reflect current organizational structures. The functional major policymaking test is unchanged.

- **Undrawn lines of credit no longer require upfront collateral.** Collateral is required only when the insider draws on the line of credit, although the unused portion continues to count against lending limits.

- **Correspondent bank restrictions move into Regulation O.** The existing statutory correspondent banking restrictions are included in the Proposal, along with new recordkeeping obligations.[2]

- **A long list of staff interpretations becomes regulatory text.** The Proposal codifies interpretations regarding transition loans, trusts and estates, the alter ego doctrine for executive officer loans, the abstention requirement for interested directors and the recordkeeping safe harbor.

Background

Section 22(h) of the Federal Reserve Act restricts the amount and terms of extensions of credit from a member bank to its insiders, and Section 22(g) imposes additional limits on extensions of credit to executive officers.[3] Regulation O implements both provisions and requires, among other things, that extensions of credit to insiders be made on substantially the same terms as those offered to unaffiliated persons, that they not present more than normal risk, that the bank's board approve certain large extensions of credit, that individual and aggregate exposures stay within specified percentages of unimpaired capital and unimpaired surplus, and that banks maintain records documenting compliance.

Although Regulation O is the Board's rule, it reaches far beyond member banks. Other federal laws subject state nonmember banks and savings associations to Sections 22(g) and 22(h) in the same manner and to the same extent as if they were member banks, with each institution's appropriate Federal banking agency enforcing compliance. As a result, Regulation O applies to every bank in the country. For simplicity, we refer to all these types of depository institutions subject to Regulation O as banks in this memorandum.

Technical revisions and reorganization

In addition to revisions to modernize and codify the Board's application of Regulation O, the Proposal also includes a number of technical revisions. The Board states that the technical revisions are not intended to have substantive effect, but rather to streamline the regulation, adopt language that eliminates unnecessary cross references, create new subsections and reorganize the regulation. See Appendix 1 for a grid that outlines the new organization of Regulation O. See Appendix 2 for a grid that maps all defined terms from other regulations and statutes that are proposed to be imported into Regulation O.

Summary of the proposal

Dollar thresholds – a one-time increase and future indexing

Threshold increases

The Proposal increases all dollar based thresholds for the first time since 1994, using changes in seasonally adjusted U.S. nominal GDP from the fourth quarter of 1994 to the fourth quarter of 2025, and rounding down to simple whole number multiples of the current thresholds.

Threshold	Current (since 1994)	Proposed
Credit card exception	$15,000	$60,000
Overdrafts with credit plan exception	$5,000	$20,000
Inadvertent overdrafts exception	$1,000	$4,000
Extensions of credit to executive officers not subject to another exception	$100,000	$400,000
Prior approval by board of directors	$500,000	$2,000,000
Public disclosure requirement	$500,000	$2,000,000

GDP rationale

The Board chose nominal GDP rather than the Consumer Price Index, published by the U.S. Bureau of Labor Statistics (CPI), as the indicator to adjust the dollar based thresholds. The Board's economic analysis observes that indexed values for aggregate income, debt and GDP indicate that, for a given nominal threshold, loan demand for any products exceeding that threshold may have increased by a factor of four or more from 1994 to 2025, while CPI grew by a factor of just above two over the same period. Despite this rationale, Governor Michael S. Barr, in a separate statement, invited commentary as to whether CPI would be a more appropriate metric by which to index the regulation's lending limits. Question 1 of the Proposal also asks about the CPI alternative.

Community banks

The Board reasoned that outdated limits may pose particular hardship in smaller communities and rural markets. The Board suggested Regulation O can cause meaningful frictions on access to credit for community bank directors. The bank also suffers as the bank is deprived of creditworthy local customers. Question 3 of the Proposal asks to what extent the Board should ease requirements or raise thresholds further for well capitalized and well managed community banks.[4]

Indexing mechanics

Every five years the Board will publish in the Federal Register adjustments to the index limits to account for changes in GDP. The Board would calculate a GDP growth adjustment scalar as the ratio of nominal GDP for the calendar year preceding the year of publication of the proposed revisions to nominal GDP for the calendar year preceding the effective date of the then current final rule, publish it in the Federal Register together with updated thresholds, and round generally to the nearest two significant digits. The Board generally would use the most current Bureau of Economic Analysis estimate published on or before September 30 of the publication year. Thresholds would not be adjusted if five year cumulative nominal GDP growth is negative, which the Board frames as reducing the risk of procyclicality during a prolonged contraction. The Board would expect the initial scalar to be 1 and to publish it in the final rule.

Aggregation

The Proposal is clear that a bank must add up all outstanding balances owed to insiders under each exception category and compare the total to the applicable dollar limit. For example, if an insider has three credit card accounts at the bank with balances of $50,000, $50,000 and $50,000, the bank must treat the total as $150,000, which would exceed the $60,000 credit card exclusion in the Proposal, rather than evaluating each account individually.

Streamlining

The Proposal also streamlines two dollar based tests that currently each involve three interacting limits.[5] Under the revised formulas, extensions of credit to an executive officer for purposes other than a home mortgage or a child's education are permitted up to the lesser of 2.5% of unimpaired capital and unimpaired surplus or $400,000. Prior board approval is required when total extensions of credit to an insider exceed the lesser of 5% of unimpaired capital and unimpaired surplus or $2,000,000. In virtually all circumstances, the dollar amount would be the binding constraint.

Lending limits unchanged

The 15% unsecured / additional 10% fully secured single borrower limit and the aggregate limit are restated without substantive change.[6] Credit exposures from insiders to banks do not count towards individual or aggregate bank lending, leaving these limits unchanged.

The passive fund complex problem and the Board's answer

Overview

In accordance with the statutory definition, a fund complex that acquires more than 10% of a class of voting securities of a regulated company becomes a "principal shareholder" of that regulated company. The proposal introduces a new defined term, "regulated company," to mean any insured depository institution (IDI), bank holding company (BHC) or savings and loan holding company (SLHC) as a way to deal with the fact that fund complexes largely invest in the public holding company. Currently, Regulation O presumes that a company is a "related interest" of a principal shareholder if the principal shareholder owns more than 10% of a class of the company's voting securities and no other person owns a greater percentage. Every portfolio company in which a principal shareholder fund complex is the largest holder above 10% thus becomes an insider of the regulated company, with the bank's lending to those companies subject to Regulation O's limits, approval requirements and recordkeeping.

The Board states that it is highly unlikely that Congress foresaw or intended for Section 22(h) to apply to extensions of credit to portfolio companies of passive fund complexes or the heavy compliance burden that it would create.[7] According to the Board, the relationship generally does not give rise to the conflict of interest and self dealing issues the statute was designed to address, because the holdings have been accumulated as passive investments and the fund complexes are not actively engaged in managing their portfolio companies. This fact pattern stands in sharp contrast to most related interests captured by Regulation O, which are normally closely held companies over which a principal shareholder exerts significant influence. The intent of the Proposal's exception for qualified fund complexes would be to permit lending relationships unrestricted by Regulation O among banks, certain qualified fund complexes and their portfolio companies, which would no longer be presumed to be related interests of the fund complex.

The Board's proposed test

Under the Proposal, the presumption of control does not apply in determining whether a portfolio company is a related interest of a principal shareholder fund complex if all of the following circumstances are fulfilled.

– The fund complex is not, and is not affiliated with, any regulated company.

– No individual investment fund in the complex owns or controls more than 10% of any class of voting securities of a regulated company.

– Non index funds in the complex do not in the aggregate own or control more than 10% of any class of voting securities of a regulated company.

– The fund complex does not meet any of the conditions giving rise to a rebuttable presumption of control under the control rule of the Board's Regulation Y with respect to a regulated company.

Two structural points deserve emphasis

First, the relief is provided to portfolio companies controlled by the fund complex but calibrated to the fund complex's relationship with the regulated company through the proposed definition of "qualified fund complex."

Second, the portfolio company remains a related interest if the complex owns or controls 25% or more of a class of its voting securities, controls the election of a majority of its directors, or has the power to exercise a controlling influence over its management or policies. The Board warns that if a qualified fund complex attempts to influence the lending decisions of any bank in its portfolio in favor of its other portfolio companies, the Board could find that the exemption no longer applies, at which point all of the complex's portfolio companies would immediately become insiders of each bank of which the complex is a principal shareholder, outstanding extensions of credit would count toward those banks' lending limits, and the complex would be liable for knowingly permitting any portfolio companies to receive future noncompliant extensions of credit.

Questions on the table

The Board leaves open several questions for further consideration, including whether to raise the presumption of control from 10% to either 15%, 20% or 25%, or eliminate the presumption subject to passivity criteria such as no board representation or management agreements. The Board solicits comment on whether Regulation O should adopt the Regulation Y control framework outright.[8] The Board asks whether market terms conditions should continue to apply to lending to portfolio companies that are no longer related interests under the rule.[9] Additionally, the Board asks questions related to the recordkeeping burden of establishing qualifying status, as well as the possible necessity of a grace period for inadvertent trips of the presumption.[10]

Interplay with existing guidance

Fund complexes relying on the current no-action positions should note that the eligibility criteria established by the OCC, FDIC and Federal Reserve and the qualified fund complex criteria in the Proposal are not identical.[11] The chart below highlights where they are different.

Element	No-Action Statement	Proposal	Change
Fund complex	A company that sponsors, manages, or advises investment funds and institutional accounts that invest in voting securities of banking firms, together with the investment vehicles they sponsor, manage or advise.	A company that sponsors, manages, or advises investment funds that invest in voting securities of a regulated company.	No practical difference.
BHC or SLHC status	The no-action Statement asserts that such fund complexes "are not and are not affiliated with" a BHC or SLHC.	As a condition of being a qualified fund complex,the fund complex must not be a BHC or SLHC or be affiliated with one.	No practical difference.
Shareholding percentage	With respect to any IDI, BHC or SLHC, the fund complex either: 1. Does not control **15 percent** or more of any class of its voting securities; or 2. Does not control more than **20 percent** of any class of its voting securities, **has provided passivity commitments to the FRB**; and A. **No individual fund in the complex owns more than 10 percent** of any class of its voting securities; and B. **The complex's non index funds do not collectively own more than 10 percent** of any class of its voting securities.	With respect to any regulated company, the fund complex: 1. Does not sponsor, manage, or advise **any investment fund that owns or controls more than 10 percent** of any class of its voting securities; and 2. Does not sponsor, manage, or advise **non index funds that in the aggregate own or control more than 10 percent** of any class of its voting securities.	Differences in **bold**.
Treatment of multiple funds as a single fund	For purposes of the **20 percent** limit above, two or more funds that share the same or substantially the same investment objective and asset composition are treated as an individual fund.	For purposes of the **10 percent** limit above, investment funds that share the same or substantially the same investment objective and asset composition are treated as a single investment fund.	Differences in **bold**.

Element	No-Action Statement	Proposal	Change
Passivity commitments and relationship to Regulation Y control rule	No explicit reference to Regulation Y, but if the fund complex has **20 percent** or more of any class of voting securities of the IDI/BHC/SLHC, **it must have provided passivity commitments to the FRB**.	In order to be a qualified fund complex, **the complex must not trip any of Regulation Y's presumptions of control** (12 C.F.R. § 225.32) with respect to a regulated company.	Differences in **bold**.
Interlocks	The fund complex must not have or seek to have any representative serve as a director, officer, agent, or employee of the IDI/BHC/SLHC.	The interlocks elements of the Regulation Y control presumptions are incorporated by reference (see above), though the Proposal requests comment on whether specific director, officer or employee interlock prohibitions should also be included as elements of the qualified fund complex exclusion.	Slightly different. Interlocks would be relevant, but not a specific element of the qualified fund complex definition.
Controlling influence	The fund complex must not exercise or attempt to exercise a controlling influence over the management or policies of the IDI/BHC/SLHC, including attempting to influence its dividend policies, loan, credit, or investment decisions or policies, pricing of services, personnel decisions, operations activities, or any other similar activities or decisions.	The requirement that none of the Regulation Y control presumptions be triggered encompasses the presumptions' factors that relate to existence of a controlling influence, though the Proposal requests comment on whether those factors should also be included as elements of the qualified fund complex exclusion.	No practical difference.

In addition to defining the universe of fund complexes whose portfolio companies would benefit from not being treated as "related interests" of the fund complex, both the no-action Statement and the Proposal address lending by a bank to a portfolio company of the fund complex, with the Proposal not adopting the no-action Statement's knowledge-based condition.

Element	No-Action Statement	Proposal	Change
Lending by the subject IDI (or subsidiary IDI of a subject BHC/SLHC)	The bank must not knowingly make an extension of credit to a qualified fund complex, unless the terms of such extension of credit are on substantially the same terms as those prevailing for comparable transactions with unaffiliated third parties and do not involve more than normal risk of repayment or present other unfavorable features.	No similar requirement proposed, though the Proposal requests comment on whether it would be necessary or appropriate to continue to require market terms for lending between banks and fund complex portfolio companies, even if those companies are not subject to the presumption of control in Regulation O.	Drops the market-terms requirement for loans to portfolio companies of qualified fund complexes.

Dodd-Frank Section 614 – credit exposures from derivatives and securities financing transactions

Statutory background

Section 614 of the Dodd-Frank Act amended Section 22(h) to include within the definition of "extension of credit"[12] any exposure arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction or securities borrowing transaction. The Dodd-Frank Act made parallel amendments to Section 23A, and the Board notes that it is separately considering whether to apply the Regulation O valuation methodologies in the Proposal to Regulation W in a future rulemaking. The Board is of the opinion that banks and their insiders rarely engage in these types of transactions. Should a qualified fund complex fail to meet the Proposal's test, however, then exposures on these types of transactions may become an issue for the banks in which the fund is invested. The point is not limited to transactions where the insider is the bank's direct counterparty. A derivative entered into with a customer or other third party may be covered by Regulation O if the derivative references securities or debt obligations of an insider. This could be most relevant where a fund complex owns 10% or more of a bank but does not qualify for the proposed fund complex relief, because other companies in that fund complex's portfolio may be related interests. In that case, equity or credit derivatives written by the bank that reference those portfolio companies' securities or debt could add a broader category of customer driven transactions to Regulation O monitoring. These proposed changes are, in any event, important now for the impact they may later have on the Federal Reserve's long awaited and now foreshadowed revisions to Regulation W.

Revisions and formalizations to what constitutes an extension of credit under the Proposal

The Proposal expands the definition of "extensions of credit" in Regulation O to expressly include the instruments below, all of which were already treated as extensions of credit under longstanding staff interpretations, with the exception of investments in debt securities of an insider and inadvertent overdrafts.

– **Leases.** Leases that are the functional equivalent of an extension of credit, such as full payout net leases, are treated as extensions of credit under the Proposal. In determining if a lease should be considered an extension of credit, the Board uses existing interpretations assessing factors such as UCC financing statements, transfer of ownership attributes, purchase options and short useful life amongst other factors considered.[13]

– **Modifications to an existing extension of credit**. An increase in amount, extension of maturity or adjustment to interest rate or other material terms would be a new extension of credit. This expands upon the existing Regulation O framework, which only captures increases in the dollar amount owed as an extension of credit.[14]

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Guarantees. Guarantees and similar transactions are expanded[15] to include issuance of guarantees, acceptances, letters of credit, including endorsements and confirmations of letters of credit issued by an insider.[16]

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Tangible economic benefit for spouses and trusts. Extensions of credit to a spouse of an insider, or the spouse's related interest, are presumptively treated as made to the insider unless the spouse is independently creditworthy and repayment is not predicated on the insider's income. For a related interest of an insider's spouse, the insider must also lack a financial or ownership interest and must not participate in management.[17] Extensions of credit to a trust or estate in which an insider holds a 25% or greater present or contingent beneficial interest are treated as being made to the insider.[18] The Board also seeks comment on a 10% alternative, which would be a materially broader net.

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Investments in debt securities of an insider. A bank that acquires an insider's debt securities assumes credit exposure to the insider in the same manner as if it had extended a loan directly. The insider is obligated to repay the bank, and the investment is reflected on the bank's balance sheet. The bank bears the risk that the insider may fail to satisfy its obligations. As such, the Proposal treats these investments as extensions of credit.

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Inadvertent overdraft exception. Inadvertent overdrafts for insiders are no longer excluded from the definition of "extension of credit" and must now comply with Regulation O's general requirements, but the broader exception for interest bearing overdraft credit plans is retained. The Board recognizes that banking practices, with respect to overdrafts, have changed since 1968, as accountholders often enter into arrangements with their banks that would prevent the bank from paying an overdraft that would not be automatically repaid. This change is consistent with Regulation W, which does not provide an exception for inadvertent overdrafts made by a bank's affiliates. Banks may still pay inadvertent overdrafts for executive officers and directors up to $4,000, subject to standard fees, provided they are repaid within five business days.

Revisions to valuation methodology

The Proposal builds on the foundation of current Regulation W, adding in new valuation methodology language which is generally consistent with the approaches taken by the Federal Reserve in its Single Counterparty Credit Limits (SCCL) rule and the OCC in its post Dodd-Frank revisions to its lending limits rule for derivatives and securities financing transactions.

The Proposal signals that the proposed valuation methodologies for credit exposures of derivatives and securities financing transactions under Regulation O would likely also be used for Regulation W, under a future rulemaking. Question 17 of the Proposal asks for the pros and cons of adopting the same valuation methodology for Regulation O and Regulation W.[19] As a practical matter, a future adoption of the approaches under the risk based capital rules for calculating the exposure amounts for derivatives and securities financing transactions would generally produce relatively low or even zero net credit exposures to the extent the transactions are collateralized. In any event, credit transactions must be fully collateralized at all times in order to comply with the requirements of Section 23A.

<table>
<tr><th rowspan="2">Instrument</th><th colspan="2">Underlying Text</th></tr>
<tr><th>Proposed Rule</th><th>Existing Regulation W</th></tr>
<tr><td>Extensions of credit</td><td>Extension of credit to an insider must be valued at the greater of:
1. The principal amount;
2. Amount owed by the insider to the bank; or
3. The sum of the amount provided on behalf of or to the insider and any additional amount the bank could be required to provide on behalf of or to the insider.

If a bank acquires an extension of credit to an insider, the extension of credit must be valued at the sum of:[20]
1. All consideration given by the bank; and
2. Any additional amount the bank would be required to provide on behalf of or to the insider.</td><td>Drawn from existing Regulation W.</td></tr>
<tr><td>Securities</td><td>Both purchases of and investment in a debt security must be valued at the greater of:
1. The total amount of consideration given by the bank in exchange for the security, reduced to account for amortization consistent with GAAP; or
2. The carrying value of the security.</td><td>Drawn from existing Regulation W.</td></tr>
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<tr><th>Proposed Rule</th><th>Existing Regulation W</th></tr>
<tr><td>Securities financing transactions (repos, reverse repos, securities lending and securities borrowing transactions)</td><td>Valued using either:

1. Any of the methods that the bank is authorized to use under the risk based capital rule issued by the bank’s appropriate Federal banking agency:
a. The capital rules approach is consistent with the Federal Reserve’s SCCL rule and the OCC’s lending limits rule;
b. Would generally permit credit exposure to be calculated net of the amount of financial collateral as defined in the capital rule, subject to standard supervisory haircuts and other adjustments; or
2. The simplified method, which equals:[21]
a. Market value of cash and securities transferred to the insider; less
b. Market value of cash in a segregated deposit account with the bank, in which the bank has a perfected security interest and any obligations of, or fully guaranteed as to principal and interest by, the US or its agencies, transferred by the insider to the bank.</td><td>Does not exist in Regulation W, the Board is considering whether to apply.</td></tr>
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<tr><td>Derivatives and derivative netting sets</td><td>Valued using any of the methods that the bank is authorized to use under the risk based capital rule issued by the bank's appropriate Federal banking agency:[22]

1. The capital rules approach is consistent with the Federal Reserve's SCCL rule and the OCC's lending limits rule;
2. Under the Current Exposure Method (CEM) or the Standardized Approach – Counterparty Credit Risk (SA-CCR) methodologies, credit exposure would generally be calculated to reflect current exposure + potential future exposure or replacement cost + potential future exposure, and in each case may be calculated net of the amount of financial collateral as defined in the capital rules, subject to standard supervisory haircuts and other adjustments;
3. Presumably the reference in the Proposal to permitting any "resulting" credit exposure to be offset by cash or U.S. government or agency securities refers solely to any credit exposure calculated net of any financial collateral as permitted under the capital rules, resulting in the net credit exposure.
a. Because Reg W currently permits covered credit transactions to be collateralized using a broader range of instruments, including debt issued by states or their political subdivisions, corporate debt securities and equity, the Board similarly requests comment on whether broader categories of collateral can be used to offset resulting credit exposures from derivatives or netting sets of derivatives.</td><td>Does not exist in Regulation W, the Board is considering whether to apply.</td></tr>
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Instrument	Underlying Text	
	Proposed Rule	**Existing Regulation W**
Credit derivatives	**Valued differently from other derivatives,** since these derivatives are treated as guarantees on behalf of an insider. Where a bank enters a credit derivative with a third party under which the bank provides credit protection on the obligations of an insider, the extension of credit is valued **at the greater of**: 1. The notional principal amount; **or** 2. The maximum potential loss to the bank.	Does not exist in Regulation W, the Board is considering whether to apply.

[23] For a situation where a bank acquires an extension of credit to an insider, the Board provides the following illustration: if a bank pays to a third party $70 for a $100 line of credit to an insider of which the insider had drawn $70, the amount of the extension of credit would be $100. *Supra* note 7, at 49536.

[24] The Board notes that the risk based capital methodology may not be relevant for smaller banks that have elected to use the community bank leverage ratio (CBLR) framework. The simplified method is, however, available to all banks. For banks subject to the CBLR framework, unimpaired capital and unimpaired surplus means the bank's tier 1 capital plus allowance for loan and lease losses or adjusted allowance for credit losses. The Board has also sought comment on whether the definition of securities financing transactions should be revised or expanded on the advantages and disadvantages of requiring all banks to use the same valuation method, and on whether the eligible collateral for the simplified method should be expanded.

[25] The Proposal does not include a non capital rule based valuation alternative for derivatives, providing the simplified approach option for community banks opting into the CBLR framework for securities financing but not derivatives.

Dodd-Frank Section 615 – asset purchases and sales with insiders

Statutory background

Regulation O currently prohibits banks from purchasing an asset from or extending credit to an insider unless the transaction is made on terms substantially similar to that of a non insider and follows credit underwriting procedures that are not less stringent.[26] Existing Regulation O does not use the phrase "market terms" or address how a bank should evaluate an insider transaction where no comparable transaction exists.[27] The Proposal addresses this gap by incorporating the "market terms" standard from Regulation W, both providing a framework for situations where comparable transactions are unavailable and aligning the two regulations.[28] The Board believes the proposed alignment of standards will reduce compliance costs and confusion.

Market terms. Defines "market terms" by reference to Section 23B of the Federal Reserve Act. The Proposal requires terms to be at least as favorable to the bank as prevailing terms for comparable nonaffiliated transactions or, absent comparable terms, terms the bank would in good faith offer to non insiders.

Purchase of an asset definition. Aligns the "purchase of an asset" definition with that in Regulation W.

Recusal. Requires recusal, so that any and all interested directors cannot directly or indirectly participate in any discussion of, or attempt to influence, the board vote.[29]

- Section 22(h) of the Federal Reserve Act and Section 18 of the Federal Deposit Insurance Act, both of which deal with recusal of interested directors, use different standards to determine the majority of the board needed for approval. Section 22(h), which applies only to extensions of credit, requires approval by a majority of the "entire board of directors," which includes interested directors. In contrast, Section 18, which applies only to the purchases and sales of assets, requires approval by a majority of "the members of the board of directors who do not have an interest in the transaction," meaning interested directors are excluded from the count entirely.[30] As this difference is statutory, the Board cannot harmonize it through rulemaking.

Residence exception

The home mortgage exception for executive officers, secured by a first lien on a residence owned by the officer, is tightened. The Proposal provides that the officer must live in the property for at least three months each year, not necessarily consecutively, provided all three months fall within the same trailing 12 month period starting from when a bank extends credit. The property may not be used for investment purposes, including renting or leasing out all or a portion of it for income. The change from "a residence" to "a single residence" is meant to confirm that only one dwelling per executive officer can carry a mortgage. We interpret this change as attempting to deal with the situation where an executive officer has more than one house and splits time between them. The three month requirement seems to be aimed at distinguishing a second home from a vacation home in light of an interpretive letter from 1967.[31]

Executive officer modernized, rebuttal the same

The title list, which has remained essentially unchanged since 1935, drops **every vice president**, **the cashier** and **the secretary**, on the reasoning that these titles no longer reliably indicate participation in major policymaking decisions. The Proposal adds **chief executive officer**, **chief financial officer**, **chief lending officer** and **chief investment officer**, although in practice most of these roles would have already been covered by the major policymaking principle. It drops **chairman of the board**.

The major policymaking principle remains unchanged. A person is an executive officer regardless of title if they participate, or have authority to participate, in major policymaking decisions. Persons holding the removed titles may still be captured as executive officers under the functional standard if they engage in major policymaking activities. Conversely, officers who retain presumptive titles may rebut their insider status through the existing board resolution mechanism by relinquishing involvement in such decisions.[32] Given the long standing board resolution rebuttal technique it is unclear how much of these changes have a practical impact or just simplify compliance.

Undrawn lines of credit

Under current Regulation O, the entire amount of a line of credit to an insider, drawn or undrawn, must be collateralized. The Proposal would make a change by not requiring the bank to collect collateral from an insider for the undrawn portion until the insider draws down any remaining amount. The bank cannot advance funds on the undrawn portion until it has collected any required collateral, unless the bank has a legal obligation to advance funds under the line of credit. The unused portion would nonetheless continue to count toward the 15% unsecured and 25% total single insider limits. The Board frames this change as removing a requirement to collateralize credit that has not yet been extended while preserving equivalent protection.

Correspondent and respondent bank lending

The Proposal incorporates existing statutory correspondent banking restrictions into Regulation O for the first time, requiring that extensions of credit by a bank to insiders of its correspondent bank, and by a correspondent bank to insiders of its respondent bank, be on substantially the same terms as those for non insiders, including interest rates and collateral, as comparable transactions with other persons and may not involve more than normal risk of repayment or present other unfavorable features.[33] Additionally, it imports the statutory prohibition on opening a correspondent account where noncompliant insider credit exists.[34]

The addition to Regulation O comes with a new set of recordkeeping requirements, which are meant to address the unique layer of separation that occurs with correspondent account lending. The Proposal sets forth two ways in which banks may maintain accurate records in the form of the "survey method" and the "borrower inquiry method."[35] The Board notes that these methods are conceptually similar to those set forth in Regulation O for a bank to maintain compliant records for loans to insiders of the bank's affiliates.

The Proposal also acknowledges that the lending activity of bankers' banks, whose customer base is other financial institutions, must comply with correspondent lending restrictions. The Proposal states that a bankers' bank must demonstrate that the terms of a loan are substantially comparable, though not identical, to those of loans it has made to borrowers not subject to the correspondent lending requirement.[36]

Disclosure and reporting simplification

The public disclosure requirement in existing Section 215.9 requires banks to disclose the names of executive officers and principal shareholders with outstanding extensions of credit. That section relies on special definitions of principal shareholder and related interest that differ from those used elsewhere in the current Regulation O. Notably, in existing Section 215.9, the special definition of principal shareholder does not exclude a company of which the bank is a subsidiary, and the special definition of related interest excludes foreign banks.

The Proposal eliminates both special definitions. Removing the special definition of principal shareholder permits banks to exclude their holding companies from the disclosure requirement, narrowing the scope of principal shareholders. Conversely, removing the special definition of related interest brings insured branches of foreign banks within the disclosure framework, broadening the scope of related interests. Overall, the Board expects the net population subject to disclosure to decrease as a result of these changes.

Separately, the Proposal consolidates the Federal Deposit Insurance Corporation Improvement Act's reporting requirement for extensions of credit secured by shares of a private bank or its holding company.[37] That requirement currently sits partly in Regulation O and partly in Regulation Y.[38] The Proposal eliminates the Regulation Y language and moves the text wholly into Regulation O in order to consolidate definitions across separate regulations and reduce redundancy.

Incorporation of Board and staff interpretations into rule text

Section IV of the Proposal converts a body of interpretive practice into rule text.

- **Transition loans**. Credit extended to a person before that person becomes an insider need not be modified or unwound until the transition loan is renewed, revised or extended, at which point it becomes a new extension of credit. Once the borrower becomes an insider, the outstanding amount would immediately count toward the individual and aggregate lending limits. If that causes a breach, the bank cannot extend additional credit subject to that limit to the insider but need not unwind the existing loan. Two limits apply: first, the treatment is unavailable for transition loans made by a bank in contemplation of the borrower becoming an insider, and second, for lines of credit it lasts 14 months, aligning with the existing Regulation O 14 month board reapproval requirement, after which the line of credit would need to comply with all requirements of the Proposal.[39]

- **Trusts and estates**. The Proposal introduces two rebuttable presumptions of control over trusts. First, a person is presumed to control a trust if that person serves as trustee, consistent with the 2020 revisions to Regulation Y. The Board is explicitly overturning a 1980 staff interpretation under which a director's status as trustee alone was not sufficient to establish control of the trust for Regulation O purposes. Second, a settlor, appointer or beneficiary of a trust is presumed to control the trust if that person has the power to both (1) remove or replace a trustee and (2) limit the trustee's power over the trust's investments or assets. These presumptions are not exhaustive, and the Board may still find control based on other facts and circumstances. With respect to estates, the Proposal imports into the Regulation O text the longstanding position that an executor is presumed to control any company or voting securities controlled by the estate. As a result, a person serving as executor would be treated as a principal shareholder of a bank if the estate holds more than 10 percent of any class of the bank's voting securities.

- **Alter egos**. The statutory restrictions on loans to executive officers generally reach only credit extended directly to the executive officer, not to related interests. The Proposal adds an anti evasion rule extending the restriction to a related interest that is the alter ego of the officer and has no independent means to repay the extension of credit, using facts and circumstances factors drawn from corporate law. These include considerations regarding the officer's ownership and management role and whether the entity was created to perpetrate fraud or evade legal obligations. Capitalization, failure to observe corporate formalities and commingling of funds are also considered.

- **Scope of principal shareholder.** The Proposal clarifies that a person is not a principal shareholder of a bank or any of the bank's affiliates if the bank is a subsidiary of that person. Under Regulation O, a holding company that controls a bank is excluded from being a principal shareholder of that bank, but the exclusion does not explicitly extend to the bank's affiliates when viewed from the bank's perspective. For example, if a holding company owns both Bank A and Bank B, the current text of Regulation O separately excludes the holding company from being a principal shareholder of each bank individually. However, Regulation O also applies to insiders of a bank's affiliates. Because the exclusion does not address the holding company's status as a principal shareholder of Bank A's affiliates, the holding company could be treated as a principal shareholder of Bank B when evaluated from Bank A's perspective. As a result, extensions of credit by Bank A to the holding company and its related interests could be subject to Regulation O's insider lending restrictions. This result was not the Board's original intent. The Proposal fixes this glitch by extending the exclusion to the bank and all of the bank's affiliates. Under the revised definition, the holding company would not be a principal shareholder of either Bank A or Bank B, including when evaluated from the perspective of either bank's affiliates. As a result, extensions of credit by Bank A to the holding company or to any of the holding company's other subsidiaries would not be subject to Regulation O's prior approval requirements, lending limits or other insider restrictions. We note that Section 23A of the Federal Reserve Act and Regulation W are designed to separately regulate this type of lending.

- **Recordkeeping safe harbor**. The Board established in 1994 that an implicit safe harbor exists under Regulation O for banks using either of two methods for maintaining records on insiders of affiliates. The Proposal imports that interpretive safe harbor to Regulation O and extends it to the new correspondent lending recordkeeping requirements, on the principle that it would be unreasonable to hold banks liable for recording information that is not entirely within their power to obtain and that the burdens of obtaining such information may outweigh the benefit of having it.

Conclusion

This first substantive revision of Regulation O since 1979 is long overdue and much of it solves pain points for banks all around the country, especially the increase in the thresholds, the proposed solution for fund complexes and the simplification of disclosure and reporting. In light of the interpretive history some of the regulatory changes may not be real practical changes, such as the changes to the presumptive title list and the definition of "extension of credit", and the incorporation of the longstanding interpretations into the regulatory text. The rewriting of the regulation in its entirety is a wise move that will make legal and compliance work easier once the Proposal is finalized. But, the full rewrite plus the importation of defined terms from other regulations, means that the work of figuring out where there is a real practical change is a heavier upfront load. The intersection with the future changes to Regulation W means that now is the moment to think through the impact of those changes. As a reminder, the due date for comments is October 5, 2026.

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[1] **Subsidiaries of banks**. The definition of subsidiary no longer excludes subsidiaries of banks, resolving longstanding ambiguity and conforming to the plain language of Section 22(h), under which a bank includes any subsidiary of a bank. To avoid capturing bank to subsidiary lending, the definition of principal shareholder excludes banks. To avoid inadvertently reaching insiders of operating subsidiaries, operating subsidiaries are excluded from the definition of affiliate, with operating subsidiary defined as a subsidiary that is not a financial subsidiary under Section 223.3(p) of Regulation W. Insiders of financial subsidiaries are treated like insiders of affiliates, on the reasoning that financial subsidiaries engage in separate business lines rather than a subset of the bank's own activities.

[2] 12 U.S.C. 1828(z).

[3] 12 U.S.C. 1972(2).

[4] 12 U.S.C. 375(b).

[5] The term "community bank" is not defined in the Proposal. Under Regulation Q, the term is defined to mean a state member bank, bank holding company or savings and loan holding company with less than $10 billion in assets, a leverage ratio of greater than 8%, less than 25% of its total consolidated assets as off balance sheet exposures and total trading assets and liabilities of 5% or less of its total consolidated assets. *See* 12 C.F.R. § 217.12(a)(2)(1).

[6] Under the current rule, the executive officer lending limit is the higher of 2.5% of unimpaired capital and unimpaired surplus or $25,000, but not more than $100,000. 12 C.F.R. 215.5(c)(4); The board approval threshold is the higher of 5% of unimpaired capital and unimpaired surplus or $25,000, with board approval always required above $500,000. 12 C.F.R. 215.4(b)(1)-(2).

[7] The single borrower limit is taken by reference from the National Bank Act's lending limits found in 12 U.S.C. 84(a). Regulation O's aggregate lending limit is native to Regulation O itself.

[8] From the fourth quarter of 2004 to the fourth quarter of 2025, the number of banks in which fund groups hold at least 10% increased 247%, from 19 to 66. Fund group holdings of at least 10% in nonbank companies increased 44%, from 1,423 to 2,047. According to the Board's economic analysis, that would amount to up to 135,102 possible bank borrower pairs potentially caught absent relief. Moreover, it would be highly likely that for funds that invest in public companies, no other shareholder would own more than 10%. 91 Fed. Reg. 49532, 49533 (Jul. 31, 2026).

[9] *Id.* note 7, at 49532.

[10] *Id.* note 7, at 49533.

[11] *Id.* note 7, at 49532.

[12] In December 2025, the OCC, FDIC and Federal Reserve each replaced their no-action guidance, in place since 2019, with open ended statements confirming the agencies will not take action against banks lending to portfolio companies of qualifying principal shareholder fund complexes. OCC Bulletin 2025-47; FDIC FIL-61-2025; SR 25-6. The agencies anticipate rescinding these statements upon the effective date of a finalized amended Regulation O.

[13] Under Section 22(h) of the Federal Reserve Act, a member bank may extend credit to a person by (1) making or renewing any loan, granting a credit line, or entering into a similar transaction in which the person becomes obligated to pay money or its equivalent to the member bank, or (2) by having credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person.

[14] Federal Reserve Board Staff Opinion 3-1080 (April 8, 1976). Board Rulings and Staff Opinions Interpreting Regulation O.

[15] Federal Reserve Board Staff Opinion 3-1081.4 (June 14, 1989).

[16] Federal Reserve Board Staff Opinion 3-1081.2 (March 9, 1981).

[17] The Proposal uses the language from the definition of "covered transaction" in Regulation W.

[18] Federal Reserve Board Staff Opinion 3-1081.1 (May 23, 1980).

[19] Federal Reserve Board Staff Opinion 3-1062.1 (May 23, 1980).

[20] *Supra* note 7, at 49533.

[21] For a situation where a bank acquires an extension of credit to an insider, the Board provides the following illustration: if a bank pays to a third party $70 for a $100 line of credit to an insider of which the insider had drawn $70, the amount of the extension of credit would be $100. *Supra* note 7, at 49536.

[22] The Board notes that the risk based capital methodology may not be relevant for smaller banks that have elected to use the community bank leverage ratio (CBLR) framework. The simplified method is, however, available to all banks. For banks subject to the CBLR framework, unimpaired capital and unimpaired surplus means the bank's tier 1 capital plus allowance for loan and lease losses or adjusted allowance for credit losses. The Board has also sought comment on whether the definition of securities financing transactions should be revised or expanded on the advantages and disadvantages of requiring all banks to use the same valuation method, and on whether the eligible collateral for the simplified method should be expanded.

[23] The Proposal does not include a non capital rule based valuation alternative for derivatives, providing the simplified approach option for community banks opting into the CBLR framework for securities financing but not derivatives.

[24] 12 C.F.R. 215.4(a).

[25] A bank is prohibited from purchasing an asset from, or selling an asset to, an insider unless the transaction is on market terms and, if it exceeds 10% of capital stock and surplus, is approved in advance by a majority of the directors without an interest in the transaction. 12 U.S.C. 1828(z)).

[26] 12 C.F.R. 223.51.

[27] Current Regulation O does not make clear whether all interested directors were required to abstain, the Proposal clarifies that every director with an interest in the transaction must recuse themselves from the approval process.

[28] For instance, on a seven member board where two directors have an interest in the transaction, Section 22(h) would require four affirmative votes, while 12 U.S.C. 1828(z) would require only three.

[29] Letter from Elisabeth L. Carmichael to Robert L. Jaynes (Oct. 11, 1967) has been cited by the Board, but the text is not available digitally.

[30] 12 C.F.R. 215.2(e)(1).

[31] The Proposal defines “bank” for correspondent banking purposes as having the meaning given in 12 U.S.C. 1841(c), supplemented by mutual savings banks, savings banks, and savings associations as defined in 12 U.S.C. 1813.

[32] 12 U.S.C. 1972(2).

[33] 12 C.F.R. 215.8(c). Regulation O stipulates recordkeeping requirements for insider lending of member banks, dictating that any member bank shall maintain records of extensions of credit to insiders of the member bank’s affiliates either through (1) the survey method, an annual survey identifying each insider of the member bank’s affiliates and maintaining records of the amount of terms of each extension of credit by the member bank to such insiders; or (2) the borrower inquiry method, requiring as part of each extension of credit that the borrower indicate whether the borrower is an insider of an affiliate of the member bank and maintaining records that identify the amount and terms of each extension of credit by the member bank to borrowers so identifying themselves.

[34] For instance, loans to banks could be compared with prior loans to holding companies to demonstrate compliance.

[35] 12 U.S.C. 375(b) note.

[36] 12 C.F.R. 225.4(e).

[37] Section 215.4(b)(3) of Regulation O.

[38] There are, in practice, very few financial subsidiaries.

Appendix 1: Proposed Regulation O new structure

Subpart	Overview of section	Section details
Subpart A	General provisions	**Section 215.1:** Authority, purpose, and scope **Section 215.2:** Definitions **Section 215.3:** Extensions of credit **Section 215.4:** Timing of application requirements **Section 215.5:** Valuation principles.
Subpart B	Requirements for extension of credit to all insiders	**Section 215.11:** Terms and creditworthiness **Section 215.12:** Prior approval **Section 215.13:** Lending limits **Section 215.14:** Prohibition on knowingly receiving an unauthorized extension of credit
Subpart C	Requirements for extensions of credit and other transactions with certain insiders	**Section 215.20:** Additional restrictions on extensions of credit to executive officers of a member bank **Section 215.21:** Additional restrictions on paying overdrafts on accounts of directors and executive officers of a member bank and its affiliates **Section 215.22:** Additional restrictions for extensions of credit related to existing and potential correspondent accounts **Section 215.23:** Prohibitions on asset purchases and sales between an insured depository institution and an insider
Subpart D	Recordkeeping and disclosure requirements	**Section 215.30:** Records of member banks **Section 215.31:** Disclosure of credit from member banks to executive officers and principal shareholders **Section 215.32:** Disclosure requirement for credit secured by certain bank and holding company stock
Subpart E	Civil penalties	**Section 215.40:** Civil penalties

Appendix 2: Defined terms cross references

Scope note: This table identifies defined terms in the Proposal that are defined, in whole or in part, by cross reference to another regulation. Terms defined by reference to federal statutes are noted separately below.

Defined Term	Location in Proposed Reg. O	Referenced Regulation / Part	Description of Cross Reference
Acting in concert	Proposed § 215.2	Regulation Y, 12 C.F.R. Part 225	Imports the meaning of “acting in concert” from § 225.41(b)(2) and applies the rebuttable presumptions in § 225.41(d)(1)–(6), except that for § 225.41(d)(2), the term “immediate family” retains the meaning given in Regulation O § 215.2.
Affiliate	Proposed § 215.2	Regulation W, 12 C.F.R. Part 223	Imports the meaning of “financial subsidiary” as defined in § 223.3 of Regulation W for purposes of the exclusion from the affiliate definition (subsidiaries of the member bank that are not financial subsidiaries are excluded).
Class of voting securities	Proposed § 215.2	Regulation Y, 12 C.F.R. Part 225	Imports the meaning of “class of voting securities” from § 225.2 of Regulation Y.
Derivative netting set	Proposed § 215.2	Board Capital Rule, 12 C.F.R. Part 217	Imports the meaning of “qualifying master netting agreement” as defined in § 217.2 of the Board’s capital rule for purposes of identifying derivative transactions governed by a qualifying master netting agreement.
Qualified fund complex	Proposed § 215.2	Regulation Y, 12 C.F.R. Part 225; Regulation LL, 12 C.F.R. Part 238	The term “qualified fund complex” does not originate from Regulation Y and is introduced for the first time in the Proposal. The term is defined by cross referencing the definitions of “bank holding company” (§ 225.2) and “savings and loan holding company” (§ 238.2) and importing the rebuttable presumption of control conditions under § 225.32 of Regulation Y to determine whether a company qualifies as a fund complex.
Regulated company	Proposed § 215.2	Regulation Y, 12 C.F.R. Part 225; Regulation LL, 12 C.F.R. Part 238	The term “regulated companies” does not originate from Regulation Y and is introduced for the first time in the Proposal. The term is defined to include insured depository institutions, bank holding companies, and savings and loan holding companies as defined in Regulation Y.
Extension of credit (guarantee, acceptance, or letter of credit)	Proposed § 215.3(a)(2)	Regulation H, 12 C.F.R. Part 208	Imports the meanings of “ineligible acceptance” and “standby letter of credit” as defined in § 208.24 of Regulation H for purposes of identifying which guarantees, acceptances, and letters of credit constitute extensions of credit.
Insider (for § 215.30(e) recordkeeping)	Proposed § 215.30(e)	Regulation O, 12 C.F.R. Part 215 (internal cross reference)	The term “insider” is defined by internal cross reference to § 215.22(a)(3) of Regulation O itself for the purposes of the correspondent/respondent bank recordkeeping requirement in § 215.30(e).

Note: Statutory definitions

Proposed § 215.2 also includes definitions that are cross referenced to federal statutes. Examples include:

- “Appropriate Federal banking agency” 12 U.S.C. 1813
- “Derivative transaction” 12 U.S.C. 84(b)
- “Foreign bank” 12 U.S.C. 3101(7)
- “Insured depository institution” 12 U.S.C. 1813(c)
- “Subsidiary” 12 U.S.C. 1841(d)

Proposed § 215.22(a)(1) defines “bank” by reference to 12 U.S.C. 1841(c), with additions for mutual savings banks, savings banks, and savings associations as defined in 12 U.S.C. 1813.