stating that the milk was produced and processed in a country declared free of rinderpest and FMD, or that the milk product was processed in a country declared free of rinderpest and FMD from milk produced in a country declared free of rinderpest and FMD. The certificate will have to name the country in which the milk was produced and the country in which the milk or milk product was processed. The certificate will also have to state that the milk or milk product has never been in any country in which rinderpest or FMD exists.

We do not expect that requiring a certificate will have any significant economic impact for U.S. importers of milk or milk products. The exporter of the milk or milk products will have to obtain the required certification through the national government of the country of export prior to shipping the milk or milk products to the United States. We do not know how many of those governments will charge a fee for providing the certificate, but it is unlikely that any fee will be high enough to significantly raise the cost of the milk or milk product should the exporter choose to pass the cost of the certificate on to the importer in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this rule have been submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.16, a new paragraph (d) is added to read as follows:

§ 94.16 Milk and milk products.

* * * * *

(d) Except for milk and milk products imported from Canada, and except as provided in this paragraph, milk or milk products imported from a country listed in § 94.1(a)(2) as free of rinderpest and foot-and-mouth disease must be accompanied by a certificate endorsed by a full-time, salaried veterinarian employed by the country of export. The certificate must state that the milk was produced and processed in a country listed in § 94.1(a)(2), or that the milk product was processed in a country listed in § 94.1(a)(2) from milk produced in a country listed in § 94.1(a)(2). The certificate must name the country in which the milk was produced and the country in which the milk or milk product was processed. Further, the certificate must state that, except for movement under seal as described in § 94.16(c), the milk or milk product has never been in any country in which rinderpest or foot-and-mouth disease exists. Milk or milk products from a country listed in § 94.1(a)(2) that were processed in whole or in part from milk or milk products from a country not listed in § 94.1(a)(2) may be imported into the United States in accordance with § 94.16(b)(3).

Done in Washington, DC, this 22nd day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–7599 Filed 3–27–95; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB60

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its risk-based capital standards for insured state nonmember banks to implement section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act). Section 350 states that the amount of risk-based capital required to be maintained by any insured depository institution, with respect to assets transferred with recourse, may not exceed the maximum amount of recourse for which the institution is contractually liable under the recourse agreement. This rule will have the effect of correcting the anomaly that currently exists in the risk-based capital treatment of recourse transactions under which an institution could be required to hold capital in excess of the maximum amount of loss possible under the contractual terms of the recourse obligation.

EFFECTIVE DATE: April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898–8906, or Cristeena G. Naser, Attorney, Legal Division, (202) 898–3587, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC's current regulatory capital standards are intended to ensure that FDIC-supervised banks that transfer assets and retain the credit risk inherent in the assets maintain adequate capital to support that risk. This is generally accomplished by requiring that bank assets transferred with recourse continue to be reported on the balance sheet in the Reports of Condition and Income (Call Reports). These amounts are thus included in the calculation of banks' risk-based and leverage capital ratios. The regulatory reporting treatment for most asset transfers with recourse differs from the treatment of such transactions under generally accepted accounting principles (GAAP).[1]

[1] The GAAP treatment focuses on the transfer of benefits rather than the retention of risk and, thus,

In cases where an institution retains a low level of recourse, the amount of capital required under the FDIC's risk-based capital standards could exceed the institution's maximum contractual liability under the recourse agreement. This can occur in transactions in which a bank contractually limits its recourse exposure to less than the full effective risk-based capital requirement for the assets transferred—generally, four percent for residential mortgage loans and eight percent for most other assets.

The FDIC and the other federal banking agencies have long recognized this anomaly in the risk-based capital standards. On May 25, 1994, the banking agencies, acting upon a recommendation by the Federal Financial Institutions Examination Council, issued a Notice of Proposed Rulemaking (NPR) (59 FR 27116) addressing the risk-based capital treatment of recourse and direct credit substitutes. One of the principal features of the NPR was a proposal to amend the banking agencies' risk-based capital standards to limit the capital charge in low level recourse transactions to an institution's maximum contractual recourse liability. The proposal for these types of transactions would effectively result in a one dollar capital charge for each dollar of low level recourse exposure, up to the full effective risk-based capital requirement on the underlying assets.

The proposal requested specific comment on whether an institution should be able to use the balance of the GAAP recourse liability account to reduce the dollar-for-dollar capital charge for the recourse exposure on assets transferred with low level recourse in a transaction reported as a sale for Call Report purposes. In addition, the proposal indicated that the capital requirement for an exposure to low level recourse retained in a transaction associated with a swap of mortgage loans for mortgage-related securities would be the lower of the capital charge for the swapped mortgages or the combined capital charge for the low level recourse exposure and the mortgage-related securities, adjusted for any double counting.

allows a transfer of receivables with recourse to be accounted for as a sale if the transferor: (1) Surrenders control of the future economic benefits of the assets; (2) is able to reasonably estimate its obligations under the recourse provision; and (3) is not obligated to repurchase the assets except pursuant to the recourse provision. In addition, the transferor must establish a separate liability account equal to the estimated probable losses under the recourse provision (GAAP recourse liability account).

The NPR also addressed other issues related to recourse transactions, including equivalent capital treatment of recourse arrangements and direct credit substitutes that provide first dollar loss protection and definitions for "recourse" and associated terms such as "standard representations and warranties." The NPR was issued in conjunction with an Advance Notice of Proposed Rulemaking (ANPR) that outlined a possible alternative approach to deal comprehensively with the risk-based capital treatment of asset securitizations and any associated recourse arrangements and direct credit substitutes. The comment period for the NPR and ANPR ended on July 25, 1994.

During the agencies' review of the comments received, the Riegle Act was signed into law on September 23, 1994. Section 350 of the Act requires the federal banking agencies to issue regulations not later than March 22, 1995, limiting the amount of risk-based capital an insured depository institution is required to hold for assets transferred with recourse to the maximum amount of recourse for which the institution is contractually liable. In order to meet the statutory requirements of section 350, the FDIC is now issuing a rule that puts into final form only those portions of the NPR dealing with low level recourse transactions.

II. Comments Received

In response to the NPR and ANPR, the FDIC received comment letters from 37 entities. Of these respondents, 25 addressed issues related to the NPR's proposed low level recourse capital treatment. These commenters included 12 banking organizations, nine trade associations, one government-sponsored agency, and three other commenters. Of these 25 respondents, 22 provided a favorable overall assessment of the low level recourse proposal. In general, these respondents viewed the low level proposal as a way of correcting an anomaly in the existing risk-based capital standards so that institutions would not be required to hold capital in excess of their contractual liability.

Nevertheless, seven of the commenters further indicated that, while the proposed low level recourse capital treatment was a positive step, it still would result in too high of a capital requirement for assets sold with limited recourse. These respondents, which included five of the 12 banking organizations and two of the nine trade associations, expressed the view that the banking agencies should adopt the GAAP treatment of assets sold with recourse for purposes of calculating the regulatory capital ratios. These commenters maintained that the GAAP recourse liability account provides adequate protection against the risk of loss on assets sold with recourse, obviating the need for additional capital.

The NPR specifically sought comment on five issues related to the proposed capital treatment of low level recourse transactions. Twelve of the 25 respondents commented on the first issue, which concerned the treatment of the GAAP recourse liability account established for assets sold with recourse reported as sales in the Call Report. These 12 commenters favored reducing the capital requirement for low level recourse transactions by the balance of the related GAAP recourse liability account, which would continue to be excluded from an institution's regulatory capital. In their view, not taking the GAAP recourse liability account into consideration would result in double coverage of the portion of the risk provided for in that account.

Twelve commenters, including five banking organizations and five trade associations, responded to the second issue, which sought comment on whether a dollar-for-dollar capital requirement would be too high for low level recourse transactions. Ten commenters indicated that such a capital charge would be too high since it was unlikely that an institution would incur losses up to its maximum contractual liability. Two others responded that whether the capital treatment was too high depended upon the credit quality of the underlying asset pool and the structure of the securitization.

The third issue dealt with ways of demonstrating that the dollar-for-dollar capital requirement might be too high and possible methods for reducing this requirement without jeopardizing safety and soundness. The nine commenters on this issue indicated that historical analysis, examiner review, and "depression scenario" stress testing would show whether the capital requirement would be too high relative to historical losses.

The fourth issue concerned ways the banking agencies could handle the increased probability of loss to the insurance funds administered by the FDIC if less than dollar-for-dollar capital is maintained against low level recourse transactions. The eight commenters on this issue stated that as long as the amount of required capital held against the low level recourse transactions was prudently assessed based upon expected losses, actual losses would seldom, if ever, exceed the capital requirement.

Thus, the insurance funds would not likely experience losses.

The fifth issue sought comment on whether the proposed low level recourse capital treatment would reduce transaction costs or otherwise help to facilitate the sale or securitization of banks' assets. The eight commenters that responded to this issue were all of the opinion that the low level capital treatment generally would help lower transaction costs and help facilitate securitization.

III. Final Rule

After considering the comments received, further deliberating on the issues involved, particularly the requirements of section 350 of the Riegle Act, and consulting with the other banking agencies, the FDIC is adopting a final rule amending its risk-based capital standards with respect to the treatment of low level recourse transactions. Specifically, the final amendment implements section 350 by reducing the risk-based capital requirements for all recourse transactions in which an FDIC-supervised bank contractually limits its recourse exposure to less than the full, effective risk-based capital requirement for the assets transferred.

This rule applies to low level recourse transactions involving all types of assets, including small business loans, commercial loans, multifamily housing loans, and residential mortgages. In this regard, the FDIC notes that previously under the risk-based capital standards certain residential mortgage loans transferred with recourse were excluded from risk-weighted assets if the institution did not retain significant risk of loss.[2] As proposed, this treatment would be superseded by the broader low level recourse rule that the FDIC is adopting.

Under the final low level recourse rule, an FDIC-supervised bank that contractually limits its maximum recourse obligation to less than the full effective risk-based capital requirement for the transferred assets would be required to hold risk-based capital equal to the contractual maximum amount of its recourse obligation. This requirement limits to one dollar the capital charge for each dollar of low-level recourse exposure. Under this dollar-for-dollar capital requirement, the capital charge for a 100 percent risk-weighted asset transferred with three percent recourse would be three percent of the amount of the transferred assets, rather than the eight percent previously required. Thus, a bank's risk-based capital requirement on a low level recourse transaction would not exceed the contractual maximum amount it could lose under the recourse obligation.

Under the final rule, an institution may reduce the dollar-for-dollar capital charge held against the recourse exposure on assets transferred with low level recourse for a transaction reported as a sale for Call Report purposes by the balance of any associated noncapital GAAP recourse liability account. In adopting this aspect of the final rule, the FDIC concurs with commenters that indicated that nonrecognition of the liability account would result in double coverage of the portion of the credit risk provided for in that account.

In applying the final rule, the FDIC will, as proposed, limit the risk-based capital requirement for an exposure to low level recourse retained in a transaction associated with a swap of mortgage loans for mortgage-related securities to the lower of the capital charge for the swapped mortgages or the combined capital charge for the low level recourse exposure and the mortgage-related securities, adjusted for any double counting.

In setting forth this final rule, the FDIC has considered the arguments that several commenters made for adopting for regulatory capital purposes the GAAP treatment for all assets sold with recourse, including those sold with low levels of recourse. Under such a treatment, assets sold with recourse in accordance with GAAP would have no capital requirement, but the GAAP recourse liability account would provide some level of protection against losses. Nevertheless, the FDIC continues to believe it would not be appropriate to adopt for regulatory capital purposes the GAAP treatment of recourse transactions, even if the transferring bank retains only a low level of recourse.

In the FDIC's view, the GAAP recourse liability account would be an inadequate substitute for maintaining capital at a level commensurate with the risks. One of the principal purposes of regulatory capital is to provide a cushion against unexpected losses. In contrast, the GAAP recourse liability account is, in effect, a specific reserve that is intended to cover only an institution's probable expected losses under the recourse provision. In this regard, the FDIC notes that the risk-based capital standards explicitly state that specific reserves created against identified losses may not be included in regulatory capital.

In addition, the amount of credit risk that is typically retained in a recourse transaction greatly exceeds the normal expected losses associated with the transferred assets. Thus, even though a transferring institution may reduce its exposure to potential catastrophic losses by limiting the amount of recourse it provides, it may still retain, in many cases, the bulk of the risk inherent in the assets. For example, an institution transferring high quality assets with a reasonably estimated expected loss rate of one percent that retains ten percent recourse in the normal course of business will sustain the same amount of losses it would have had the assets not been transferred. This occurs because the amount of exposure under the recourse provision is very high relative to the amount of expected losses. The FDIC believes that in such transactions the transferor has not significantly reduced its risk for purposes of assessing regulatory capital and should continue to be assessed regulatory capital as though the assets had not been transferred.

The FDIC is issuing this final rule now in order to implement section 350 of the Riegle Act in accordance with the statutory deadline. Consequently, the rule deals with only those portions of the NPR concerned with low level recourse transactions. The FDIC will continue to consider, on an interagency basis, other aspects of the NPR, as well as all aspects of the ANPR that was issued in conjunction with the NPR.

This final rule is effective April 27, 1995. However, FDIC-supervised banks may choose to apply the low level recourse rule when completing the risk-based capital schedule (Schedule RC–R) in their Reports of Condition and Income (Call Reports) for March 31, 1995.

IV. Regulatory Flexibility Act Analysis

The purpose of this final rule is to reduce the risk-based capital requirement on transfers of assets with low levels of recourse. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC hereby certifies that this rule will have a beneficial economic impact on small business entities (in this case, small banks) that sell assets with low levels of recourse.

[2] Under this treatment, a pool of residential mortgages that had been transferred with recourse was excluded from risk-weighted assets if the transferring institution did not retain significant risk of loss, *i.e.*, the institution's maximum contractual recourse exposure did not exceed its reasonably estimated probable losses on the transferred mortgages, and the institution established and maintained a recourse liability account equal to the maximum amount of its recourse obligation. Under the low level recourse rule, this type of sale transaction would effectively continue to be excluded from risk-weighted assets because of the size of the recourse liability account that must be maintained.

V. Paperwork Reduction Act

The FDIC has determined that, in comparison to the existing risk-based capital treatment of low level recourse transactions, this final rule will not increase the regulatory paperwork burden of FDIC-supervised banks pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 325 of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 is revised to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. Section II.D.1. of appendix A to part 325 is amended by removing the sixth paragraph and adding in its place two new paragraphs to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

D. * * *

1. * * *

Sale and repurchase agreements and *asset sales with recourse,* if not already included on the balance sheet, are also converted at 100 percent. For risk-based capital purposes, the definition of sales of assets with recourse, including the sale of one-to-four family residential mortgages, is consistent with the definition contained in the instructions for the preparation of the Consolidated Reports of Condition and Income. Accordingly, except as noted below, the entire amount of any assets transferred with recourse that are not already included on the balance sheet, including pools of one-to-four family residential mortgages, is to be converted at 100 percent and assigned to the risk weight category appropriate to the obligor or, if relevant, the guarantor or the nature of the collateral. The terms of a transfer of assets with recourse may contractually limit the amount of the bank's liability to an amount less than the effective risk-based capital requirement for the assets being transferred with recourse. If such a transaction (including one that, in accordance with the instructions for the preparation of the Consolidated Reports of Condition and Income, is reported as a financing, *i.e.*, the assets are not removed from the balance sheet) meets the criteria for sale treatment under generally accepted accounting principles, the amount of total capital required is equal to the maximum amount of loss possible under the recourse provision. If the transaction is also treated as a sale in accordance with the instructions for the preparation of the Consolidated Reports of Condition and Income, then the required amount of capital may be reduced by the balance of any associated noncapital liability account established pursuant to generally accepted accounting principles to cover estimated probable losses under the recourse provision. So-called ''loan strips'' (that is, short-term advances sold under long-term commitments without direct recourse) are defined in the instructions for the preparation of the Consolidated Reports of Condition and Income and for risk-based capital purposes as assets sold with recourse.

In addition, a 100 percent conversion factor applies to forward agreements. Forward agreements are legally binding contractual obligations to purchase assets with drawdown which is certain at a specified future date. These obligations include forward purchases, forward deposits placed, and partly paid shares and securities, but do not include forward foreign exchange rate contracts or commitments to make residential mortgage loans.

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 21st day of March, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–7535 Filed 3–27–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 95–55]

RIN 1550–AA78

Loans to one Borrower

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its lending limits regulation, also known as the loans to one borrower (LTOB) rule, to reflect recent changes to the Office of the Comptroller of the Currency's (OCC's) lending limits regulation. Section 5(u) of the Home Owners' Loan Act requires that savings association lending limits parallel those applicable to national banks. This interim final rule amends OTS's LTOB regulation so that thrifts, like national banks, will use regulatory capital as the starting point for determining ''unimpaired capital and unimpaired surplus'' for LTOB purposes, removing the need for a separate calculation. It also removes other outdated or redundant provisions.

DATES: The interim final rule is effective March 28, 1995. Written comments on this interim final rule must be received on or before April 27, 1995.

ADDRESSES: Send comments to Director, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 95–55. These submissions may be hand-delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: William J. Magrini, Project Manager, Policy, (202) 906–5744; Valerie J. Lithotomos, Counsel (Banking and Finance), (202) 906–6439; Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Ties Between OCC and OTS Lending Limits

Both savings associations and national banks have statutory limits placed on the amount an institution can lend to one borrower. Since 1989, Section 5(u) of the Home Owners' Loan Act (HOLA) has provided that ''Section 5200 of the Revised Statutes applies to savings associations in the same manner and to the same extent as it applies to