



RESCINDED

OCC 1995-59

Subject: Low Level Recourse
Date: November 8, 1995

**To: Chief Executive Officers of National Banks,
Department and Division Heads, Examining
Personnel and Other Interested Parties**

Description: Transmits Final Rule

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Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325, 108 Stat. 2160, 12 U.S.C. 4808. The Office of Thrift Supervision, the Federal Reserve Board, and the Federal Deposit Insurance Corporation have issued or plan to issue similar rules.

SUMMARY

The OCC is amending its risk-based capital standards pertaining to assets transferred with recourse. The amended rule applies to recourse transactions in which an institution contractually limits its recourse exposure to less than the full effective risk-based capital requirement of the assets transferred. This amended rule now states that the required amount of risk-based capital will not exceed the maximum contractual liability of the institution under the recourse agreement.

To implement this rule, the OCC and other banking agencies have developed an interim calculation which adjusts reportable risk-weighted assets to reflect the new capital treatment. The resulting capital requirement is equal to the maximum amount of recourse exposure, less the balance of any associated recourse liability account established under generally accepted accounting practices.

For further information contact David Thede, Senior Attorney, Securities and Corporate Practices Division (202) 874-5210, or Stephen Jackson, National Bank Examiner, Office of the Chief National Bank Examiner (202) 874-5070.

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Related Links

- [Final Rule 60 FR 17986](#)

[Federal Register: April 10, 1995 (Volume 60, Number 68)]
[Rules and Regulations]
[Page 17986-17987]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr10ap95-4]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95-07]
RIN 1557-AB14

Risk-Based Capital Requirements--Low Level Recourse

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its risk-based capital standards as required by section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994. This final rule modifies the risk-based capital treatment of recourse obligations to ensure that the amount of capital that a bank must hold against a recourse obligation does not exceed the bank's maximum contractual exposure. This corrects an anomaly in the existing risk-based capital standards under which the capital requirement could exceed a bank's maximum exposure.

EFFECTIVE DATE: May 10, 1995.

FOR FURTHER INFORMATION CONTACT: David Thede, Senior Attorney, Securities and Corporate Practices Division (202/874-5210), Stephen Jackson, National Bank Examiner, (202) 874-5070, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Office of the Comptroller of the Currency (OCC) is revising its risk-based capital standards as required by section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, 108 Stat. 2160 (the ``CDRI Act''). Under the OCC's current risk-based capital standards, assets transferred with recourse are reported on the balance sheet in regulatory reports. These amounts are thus included in the calculation of banks' risk-based capital and leverage capital ratios. Where a bank holds a low level of recourse, the amount of capital required could exceed the bank'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, 4 percent for mortgage assets and 8 percent for other assets.

The OCC and the other Federal banking agencies (the Office of Thrift Supervision, Federal Reserve Board, and Federal Deposit Insurance Corporation) have long recognized this anomaly in the risk-based capital standards. On May 25, 1994, the Federal banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), issued a notice of proposed rulemaking and advance notice of proposed rulemaking (59 FR 27116) covering the capital treatment of recourse obligations and direct credit substitutes. The notice proposed, among other things, to amend the agencies' risk-based capital guidelines to limit the capital charge in low level recourse transactions to an institution's maximum contractual recourse liability. For these types of transactions the proposal would effectively result in a dollar capital charge for each dollar of low level recourse exposure, up to the full effective risk-based capital requirement on the underlying assets.

Of the 38 commenters that sent comments to the OCC in response to the May 25 proposal, 13 commenters specifically addressed limiting the capital requirement for low level recourse transactions to a bank's maximum contractual exposure. All 13 supported the limit, although many advocated additional changes to the OCC's capital standards for recourse obligations.

On September 23, 1994, the CDRI Act was signed into law. The OCC is issuing this final rule now in order to implement section 350. Consequently, this final rule covers only the limitation of the capital requirement to a bank's maximum contractual exposure and does not address any of the other issues raised in the May 25, 1994, proposal. The OCC and the other Federal banking agencies will continue to consider those other issues. [[Page 17987]]

The OCC, in consultation with the other banking agencies, will issue further guidance specifying how the modified capital standard will be implemented for reporting purposes. Following issuance of this additional guidance, the OCC intends to amend the rule to include a specific description of the reporting treatment.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will increase somewhat the measured risk-based capital ratios of banks of all sizes that sell assets with low levels of recourse and will have a beneficial, but not material, effect on those banks.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 3--MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3, section 3 is amended by adding a new paragraph (c) to read as follows:

Appendix A to Part 3--Risk-Based Capital Guidelines

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Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

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(c) Recourse Obligations. Where the amount of recourse liability retained by a bank is less than the capital requirement for credit-risk exposure, the bank shall maintain capital for the recourse liability equal to the amount of credit-risk exposure retained. Any recourse liability that is subject to this section 3(c) is not subject to any additional capital treatment under sections 3(a) or 3(b) of this appendix A.

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Dated: March 17, 1995.
Eugene A. Ludwig,
Comptroller of the Currency.
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