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Proposal and Comment Information

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Subject

Public Comment // Docket No. R-1896: Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Bank Holding Companies

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The qualifying fund complex exemption in proposed Sec. 215.2 rests on real data rather than assertion: Table 1's finding that the number of banks in which fund groups hold 10 percent or more grew 247 percent between 2004Q4 and 2025Q4 gives that exemption's rationale an empirical footing that much of the rest of the preamble lacks. That data-first approach should be the model for the rest of the rulemaking, not the exception.

The most consequential defect is proposed Sec. 215.6, the GDP growth adjustment. Every five years the Board will publish a new scalar and multiply it against every dollar threshold in the rule -- the $2,000,000 prior-approval trigger, the $400,000 executive-officer exception, the $60,000 credit-card exemption -- through Federal Register notice alone, not notice-and-comment rulemaking. The formula is fixed today, but its output compounds indefinitely without further public review of whether nominal GDP growth still tracks the self-dealing risk these thresholds exist to bound. The preamble justifies the initial fourfold increase with a specific, dated record: nominal GDP growth from the fourth quarter of 1994 to the fourth quarter of 2025. No comparable review is built into the recurring adjustments that follow. The Board should commit to periodic notice-and-comment reconsideration of the indexing methodology itself, rather than letting a formula chosen once govern every threshold in Regulation O in perpetuity.

A second problem sits inside the fund-complex exemption itself. The preamble states that if a qualifying fund complex attempts to influence a bank's lending decisions, "All of the fund complex's portfolio companies would immediately become related interests of the fund complex" -- retroactively converting every outstanding extension of credit into an insider loan the moment that finding is made. The proposal specifies no notice period, no cure period, and no mechanism by which a lending bank, which has no visibility into a fund complex's internal conduct, would learn of the disqualifying event before it is already out of compliance. Question 14 asks whether a grace period would help, but the operative text of Sec. 215.2 includes none. A defined cure period belongs in the regulation text itself, not left as an open question for a later rulemaking.

Third, the initial regulatory flexibility analysis certifies no significant impact on small entities without accounting for burden the rule itself creates. Proposed Sec. 215.30(e) newly codifies recordkeeping for the correspondent-lending restrictions in 12 U.S.C. 1972(2), requiring an annual survey or borrower-inquiry system for every correspondent and respondent relationship. Section VII.A's burden table, however, extends only the existing FR O collection (OMB No. 7100-0382) tied to current Sec. 215.30 and .31; it does not separately estimate hours for the new Sec. 215.30(e) correspondent survey, even though the preamble's own correspondent-lending discussion flags this as a particular concern for bankers' banks, whose lending activity is concentrated in exactly these relationships. An RFA certification cannot rest on a burden estimate that omits the one new recordkeeping requirement most likely to bind smaller, correspondent-dependent institutions.

Fourth, proposed Sec. 215.20(d)(2)(iii)'s three-month residency requirement for the home-mortgage exception is, by the preamble's own account, chosen from "the middle of the range of reasonable values" between one and six months rather than derived from the statutory term "residence" or any interpretive record. An examiner applying this test to an executive officer who splits time between two properties has no way to distinguish a compliant pattern from a short violation except by counting days after the fact, and the rule provides no documentation mechanism for that count. The Board should pair the day threshold with a defined attestation or recordkeeping requirement, so compliance turns on a document a bank can produce rather than a fact pattern reconstructed after an exam finding.

None of this is a reason to reject a proposal that, in most other respects, ties its changes to specific statutory text and a dated economic record. Building a periodic review step into Sec. 215.6, a cure period into Sec. 215.2, a burden estimate into the RFA analysis, and a documentation requirement into Sec. 215.20 would close the gaps without disturbing the parts of Regulation O this proposed rule does very well.

Submitted by: Steven Quinn Singleton