

# FENIMORE KAY HARRISON LLP, STEPHANIE KALAHURKA

## Proposal and Comment Information

**Title:** Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Bank Holding Companies (Reg O and Y), R-1896

**Comment ID:** FR-2026-0028-01-C42

## Submitter Information

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**Organization Type:** Company

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Please see attached comment letter on this proposal. Docket No. R-1896

# FENIMORE KAY | HARRISON

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October 20, 2026

***Via Electronic Submission***

Benjamin W. McDonough  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

***Re: Docket No. R-1896; RIN 7100-AH27—Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Bank Holding Companies.***

Dear Mr. McDonough:

Fenimore Kay Harrison LLP appreciates the opportunity to comment on the proposed amendments to Regulation O and Regulation Y issued by the Board of Governors of the Federal Reserve System (the “Board”). We represent community banks and other financial institutions across the country on corporate, transactional, regulatory, governance, and compliance matters. Much of that work involves Regulation O. We routinely advise community banks on who qualifies as an insider, insider lending, board governance, and examinations.

We support the Board’s effort to update Regulation O, and we agree that the update should not come at the expense of the regulation’s core protections against preferential lending, conflicts of interest, and insider abuse. Many of the regulation’s provisions, including its dollar thresholds and title-based presumptions, were written for a different era. They do not account for today’s credit needs, how banks are now managed, or the role local business leaders play on community-bank boards.

Our comments and recommendations follow.

***Dollar Thresholds and Nominal GDP Indexing***

We support raising Regulation O’s dollar thresholds. A threshold that stays fixed for decades becomes more restrictive every year, even though the underlying risk has not changed. As a result, ordinary and fully-underwritten loans that would not have been considered significant when the thresholds were set can now trigger special approvals or restrictions.



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Raising the thresholds would leave Regulation O's main safeguards in place. Insider loans would still be subject to the prohibition on preferential terms, ordinary underwriting standards, individual and aggregate lending limits, applicable approval requirements, and the bank's own credit policies.

We also support periodically adjusting the thresholds based on nominal GDP. Because nominal GDP reflects both prices and overall economic activity, it is a sensible measure for a regulation that covers consumer, agricultural, commercial, and other business credit. Automatic indexing will keep the thresholds from falling out of date again simply because of inflation and economic growth.

### ***Prior Board Approval Requirement***

We support replacing the overlapping thresholds in current § 215.4(b)(1) and (2) with a single prior-approval threshold: the lesser of five percent of the bank's unimpaired capital and unimpaired surplus or \$2 million, as periodically adjusted.

The current provisions are hard to apply because banks must reconcile a percentage-based threshold, a minimum dollar amount, and a separate maximum dollar amount, all spread across two overlapping prohibitions. A single threshold is a clear improvement.

Proposed § 215.12 could still be more direct. The proposed language first prohibits credit above the threshold and then permits that credit if the board approves it. The real requirement is even more simple and straightforward. Specifically, that a bank must get advance board approval before extending credit that would push aggregate exposure above the threshold.

We recommend revising proposed § 215.12 substantially as follows:

### ***§ 215.12 Prior approval***

***(a) When prior approval is required.*** Before extending credit to an insider of the member bank or an insider of its affiliates, a member bank must obtain the approval required by paragraph (b) if, after giving effect to the proposed extension of credit, the aggregate amount of all extensions of credit to the insider and the insider's related interests would exceed the lower of:

1. Five percent of the member bank's unimpaired capital and unimpaired surplus; or
2. \$2 million, multiplied by the applicable GDP growth adjustment under § 215.6.



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***(b) Approval procedure.*** *The extension of credit must be approved in advance by a majority of the member bank's entire board of directors. Each interested party must abstain from participating, directly or indirectly, in the discussion and vote.*

***(c) Approved lines of credit.*** *Separate approval is not required for an advance under a line of credit approved under this section within the preceding 14 months, provided the advance complies with § 215.11.*

***(d) Indirect participation.*** *An interested party participates indirectly by taking part in the board's discussion or attempting to influence the vote.*

This version keeps the proposed rule's substantive protections. It simply states the approval requirement affirmatively and makes clear that credit above the threshold is permitted with advance board approval and the required abstentions.

### ***Executive Officer "Other Purpose" Limit***

We support raising the current \$100,000 limit on extensions of credit to executive officers for purposes not otherwise excepted by Regulation O, and we recommend setting the new limit at \$500,000 rather than the proposed \$400,000. A \$500,000 limit better reflects what things cost today, whether for investment property, family businesses, farming operations, professional practices, or other legitimate purposes. Under the current limit, an executive officer may have to borrow elsewhere even when the officer's own bank would make the loan on market terms under its ordinary underwriting standards.

The higher limit would not meaningfully weaken Regulation O. These loans would still be subject to the prohibition on preferential terms, applicable underwriting standards, the bank's credit policies, and the regulation's individual and aggregate limits. We support the proposal's periodic nominal GDP adjustment and recommend that it apply to the \$500,000 limit. Because adjustments would occur only every five years, a higher starting point would also make it less likely that the limit becomes too restrictive again between adjustments.

### ***Definition of "Executive Officer"***

We support the proposed revisions to the definition of "executive officer." Adding the chief executive officer, chief financial officer, chief lending officer, and chief investment officer to the list of presumptive titles appropriately includes positions that ordinarily involve major policymaking. We also strongly support removing "every vice president," "the cashier," and "the secretary" from the list of presumptive titles. As the Board recognizes, banks use those titles inconsistently, and they are often held by employees whose duties are operational or administrative, rather than policymaking.



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We agree that the functional test should remain the governing standard. However, because the proposal provides that a person may be an executive officer notwithstanding a board resolution excluding the person from major policymaking functions, the final rule should make clear that a bank's reasonable, documented determination is entitled to weight. Absent changed facts or evidence of actual participation in major policymaking, that determination should not be overridden retroactively, as discussed further below.

### ***Independent, Nonemployee Board Chairs***

The final rule should clarify that an independent, nonemployee chair of the board is not an executive officer solely because the individual serves as board chair. A board chair may run board meetings, coordinate governance matters, facilitate communication among directors, and oversee management without taking part in day-to-day operations or exercising executive authority. Overseeing management is not the same as managing.

An independent, nonemployee chair should be treated as an executive officer only if the individual's actual authority, responsibilities, or conduct shows participation in major policymaking beyond the ordinary governance role.

### ***Advance Notice of Facts-and-Circumstances Determinations***

The Board should set out a clear process for cases in which an agency or examiner concludes that someone not presumed to be an executive officer nonetheless participates in major policymaking functions. A bank cannot comply with Regulation O without knowing who its executive officers are. That status affects lending limits, permissible purposes, approvals, reporting, recordkeeping, and existing loans. A bank cannot reasonably manage these requirements if an individual's status can be changed retroactively during an examination.

We have seen cases in which an individual was not treated as an executive officer in prior examinations but was later deemed one, even though nothing material had changed in the individual's title, authority, responsibilities, or conduct. The bank was then cited for violations for loans already on its books that it made while reasonably understanding the individual was not an executive officer.

In some of these cases, the determination appeared to be driven by the individual's significant ownership interest. But principal shareholder status and executive officer status are different things. Ownership alone should not establish that a person participates in major policymaking.

We recommend that the final rule or supervisory guidance provide that:



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- A facts-and-circumstances determination that an individual is an executive officer must be communicated to the bank clearly and in writing;
- The notice must identify the facts and policymaking authority supporting the determination;
- In the absence of materially changed facts, evasion, bad faith, or a materially unreasonable prior classification, the determination should apply prospectively;
- The bank should receive a reasonable period to update its records, policies, approvals, reporting, and lending arrangements; and
- Existing loans made while the bank reasonably treated the individual as not being an executive officer should not result in retroactive violations solely because of the new classification arising out of a subjective examiner determination.

This approach would leave the agencies fully able to address evasion, undisclosed facts, or preferential lending, while giving banks that act reasonably and in good faith fair notice.

### ***Community-Bank Directors***

Community banks rely on directors who know the local economy and the needs of local businesses, farms, professionals, and consumers. The people best suited to serve are often business owners and civic leaders who have their own legitimate borrowing needs.

Regulation O should prevent preferential insider lending, but it should not stop a community bank from serving an important local business just because the owner sits on the bank's board. If the director's bank cannot make an ordinary, fully underwritten loan, the business may have to look outside the community for financing, and qualified business leaders may hesitate to serve as directors.

The final rule should keep the requirement that insider loans be made on substantially the same terms, and under the same underwriting standards, as comparable loans to non-insiders. Within that framework, it should give community banks enough flexibility to meet legitimate credit needs and keep strong local boards.

### ***Passive Investment Funds***

We support the proposed exclusion for qualifying passive investment fund complexes and their portfolio companies.

Regulation O should focus on relationships that involve actual influence, conflicts of interest, or a real risk of preferential treatment. A passive fund's ownership stake should not automatically turn a wide range of unrelated portfolio companies into related interests when the fund has no influence over the bank's lending, management, operations, or policies.



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The final rule should set objective, workable qualification criteria. Banks should be able to rely on public information, certifications, regulatory filings, or other reasonable documentation rather than having to investigate a fund complex's internal activities. The rule should also provide reasonable notice and a transition or cure period if a qualifying fund later does something that disqualifies it. A bank should not be found retroactively noncompliant because of conduct it could not reasonably have detected when it made the loan.

### ***Consistent Interagency Treatment***

We encourage the Federal Reserve, the FDIC, and the OCC to align their interpretations, examination procedures, and supervisory expectations for Regulation O and comparable insider-lending rules. How insider-lending rules apply in practice should not depend on a bank's charter or primary federal regulator. Consistency matters most for executive officer classifications, the treatment of independent board chairs, related-interest and control determinations, and whether examination determinations apply prospectively or retroactively. Coordination would be fairer to institutions, reduce unnecessary legal and compliance costs, and give banks more certainty in running their insider-lending programs.

### ***Conclusion***

We support the Board's effort to update Regulation O and urge the Board to adopt the recommendations discussed above. Taken together, they would ease unnecessary burdens on banks, particularly community banks, while keeping Regulation O's essential protections against preferential terms, conflicts of interest, and insider abuse.

Thank you for considering our comments.

Respectfully submitted,

***Fenimore Kay Harrison LLP***