

**§ 1835. Insured depository institution capital requirements for transfers of small business obligations**

**(a) Accounting principles**

The accounting principles applicable to the transfer of a small business loan or a lease of personal property with recourse contained in reports or statements required to be filed with Federal banking agencies by a qualified insured depository institution shall be consistent with generally accepted accounting principles.

**(b) Capital and reserve requirements**

With respect to the transfer of a small business loan or lease of personal property with recourse that is a sale under generally accepted accounting principles, each qualified insured depository institution shall—

- (1) establish and maintain a reserve equal to an amount sufficient to meet the reasonable estimated liability of the institution under the recourse arrangement; and
- (2) include, for purposes of applicable capital standards and other capital measures, only the amount of the retained recourse in the risk-weighted assets of the institution.

**(c) Qualified institutions criteria**

An insured depository institution is a qualified insured depository institution for purposes of this section if, without regard to the accounting principles or capital requirements referred to in subsections (a) and (b) of this section, the institution is—

- (1) well capitalized; or
- (2) with the approval, by regulation or order, of the appropriate Federal banking agency, adequately capitalized.

**(d) Aggregate amount of recourse**

The total outstanding amount of recourse retained by a qualified insured depository institution with respect to transfers of small business loans and leases of personal property under subsections (a) and (b) of this section shall not exceed—

- (1) 15 percent of the risk-based capital of the institution; or
- (2) such greater amount, as established by the appropriate Federal banking agency by regulation or order.

**(e) Institutions that cease to be qualified or exceed aggregate limits**

If an insured depository institution ceases to be a qualified insured depository institution or exceeds the limits under subsection (d) of this section, this section shall remain applicable to any transfers of small business loans or leases of personal property that occurred during the time that the institution was qualified and did not exceed such limit.

**(f) Prompt corrective action not affected**

The capital of an insured depository institution shall be computed without regard to this section in determining whether the institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under section 1831o of this title.

**(g) Regulations required**

Not later than 180 days after September 23, 1994, each appropriate Federal banking agency

shall promulgate final regulations implementing this section.

**(h) Alternative system permitted**

**(1) In general**

At the discretion of the appropriate Federal banking agency, this section shall not apply if the regulations of the agency provide that the aggregate amount of capital and reserves required with respect to the transfer of small business loans and leases of personal property with recourse does not exceed the aggregate amount of capital and reserves that would be required under subsection (b) of this section.

**(2) Existing transactions not affected**

Notwithstanding paragraph (1), this section shall remain in effect with respect to transfers of small business loans and leases of personal property with recourse by qualified insured depository institutions occurring before the effective date of regulations referred to in paragraph (1).

**(i) Definitions**

For purposes of this section—

(1) the term “adequately capitalized” has the same meaning as in section 1831o(b) of this title;

(2) the term “appropriate Federal banking agency” has the same meaning as in section 1813 of this title;

(3) the term “capital standards” has the same meaning as in section 1831o(c) of this title;

(4) the term “Federal banking agencies” has the same meaning as in section 1813 of this title;

(5) the term “insured depository institution” has the same meaning as in section 1813 of this title;

(6) the term “other capital measures” has the meaning as in section 1831o(c) of this title;

(7) the term “recourse” has the meaning given to such term under generally accepted accounting principles;

(8) the term “small business” means a business that meets the criteria for a small business concern established by the Small Business Administration under section 632(a) of title 15; and

(9) the term “well capitalized” has the same meaning as in section 1831o(b) of this title.

(Pub. L. 103-325, title II, §208, Sept. 23, 1994, 108 Stat. 2201.)

CODIFICATION

Section was enacted as part of the Small Business Loan Securitization and Secondary Market Enhancement Act of 1994 and as part of the Riegle Community Development and Regulatory Improvement Act of 1994, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

**§ 1835a. Prohibition against deposit production offices**

**(a) Regulations**

The appropriate Federal banking agencies shall prescribe uniform regulations effective June 1, 1997, which prohibit any out-of-State bank from using any authority to engage in