

§ 208.23

12 CFR Ch. II (1-1-01 Edition)

(based on full-time equivalent positions) will be held by low- and moderate-income persons; and

(F) Providing technical assistance, credit counseling, research, and program development assistance to low- and moderate-income persons, small businesses, or nonprofit corporations to help achieve community development;

(2) The investment is permitted by state law;

(3) The investment will not expose the member bank to liability beyond the amount of the investment;

(4) The aggregate of all such investments of the member bank does not exceed the sum of five percent of its capital stock and surplus;

(5) The member bank is well capitalized or adequately capitalized under §§ 208.43(b) (1) and (2);

(6) The member bank received a composite CAMELS rating of "1" or "2" under the Uniform Financial Institutions Rating System as of its most recent examination and an overall rating of "1" or "2" as of its most recent consumer compliance examination; and

(7) The member bank is not subject to any written agreement, cease-and-desist order, capital directive, prompt-corrective-action directive, or memorandum of understanding issued by the Board or a Federal Reserve Bank.

(c) *Notice to Federal Reserve Bank.* Not more than 30 days after making an investment under paragraph (b) of this section, the member bank shall advise its Federal Reserve Bank of the investment, including the amount of the investment and the identity of the entity in which the investment is made.

(d) *Investments requiring Board approval.* (1) With prior Board approval, a member bank may make public welfare investments under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a), other than those specified in paragraph (b) of this section.

(2) Requests for Board approval under this paragraph (d) shall include, at a minimum:

(i) The amount of the proposed investment;

(ii) A description of the entity in which the investment is to be made;

(iii) An explanation of why the investment is a public welfare invest-

ment under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a);

(iv) A description of the member bank's potential liability under the proposed investment;

(v) The amount of the member bank's aggregate outstanding public welfare investments under paragraph 23 of section 9 of the Federal Reserve Act;

(vi) The amount of the member bank's capital stock and surplus; and

(vii) If the bank investment is not eligible under paragraph (b) of this section, explain the reason or reasons why it is ineligible.

(3) The Board shall act on a request under this paragraph (d) within 60 calendar days of receipt of a request that meets the requirements of paragraph (d)(2) of this section, unless the Board notifies the requesting member bank that a longer time period will be required.

(e) *Divestiture of investments.* A member bank shall divest itself of an investment made under paragraph (b) or (d) of this section to the extent that the investment exceeds the scope of, or ceases to meet, the requirements of paragraphs (b)(1) through (b)(4) or paragraph (d) of this section. The divestiture shall be made in the manner specified in 12 CFR 225.140, Regulation Y, for interests acquired by a lending subsidiary of a bank holding company or the bank holding company itself in satisfaction of a debt previously contracted.

§ 208.23 Agricultural loan loss amortization.

(a) *Definitions.* For purposes of this section:

(1) *Accepting official* means:

(i) The Reserve Bank in whose district the bank is located; or

(ii) The Director of the Division of Banking Supervision and Regulation in cases in which the Reserve Bank cannot determine that the bank qualifies.

(2) *Agriculturally related other property* means any property, real or personal, that the bank owned on January 1, 1983, and any additional property that it acquired prior to January 1, 1992, in connection with a qualified agricultural loan. For the purposes of paragraph (d) of this section, the value of

Federal Reserve System

§ 208.23

such property shall include the amount previously charged off as a loss.

(3) *Participating bank* means an agricultural bank (as defined in 12 U.S.C. 1823(j)(4)(A)) that, as of January 1, 1992, had a proposal for a capital restoration plan accepted by an accepting official and received permission from the accepting official, subject to paragraphs (d) and (e) of this section, to amortize losses in accordance with paragraphs (b) and (c) of this section.

(4) *Qualified agricultural loan* means:

(i) Loans that finance agricultural production or are secured by farm land for purposes of Schedule RC-C of the FFIEC Consolidated Report of Condition or such other comparable schedule;

(ii) Loans secured by farm machinery;

(iii) Other loans that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the Board; and

(iv) The remaining unpaid balance of any loans described in paragraphs (a)(4) (i), (ii) and (iii) of this section that have been charged off since January 1, 1984, and that qualify for deferral under this section.

(b)(1) Provided there is no evidence that the loss resulted from fraud or criminal abuse on the part of the bank, the officers, directors, or principal shareholders, a participating bank may amortize in its Reports of Condition and Income:

(i) Any loss on a qualified agricultural loan that the bank would be required to reflect in its financial statements for any period between and including 1984 and 1991; or

(ii) Any loss that the bank would be required to reflect in its financial statements for any period between and including 1983 and 1991 resulting from a reappraisal or sale of agriculturally-related other property.

(2) Amortization under this section shall be computed over a period not to exceed seven years on a quarterly straight-line basis commencing in the first quarter after the loan was or is charged off so as to be fully amortized not later than December 31, 1998.

(c) *Accounting for amortization.* Any bank that is permitted to amortize losses in accordance with paragraph (b)

of this section may restate its capital and other relevant accounts and account for future authorized deferrals and authorizations in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account shall be included in qualifying capital pursuant to appendix A of this part.

(d) *Conditions of participation.* In order for a bank to maintain its status as a participating bank, it shall:

(1) Adhere to the approved capital plan and obtain the prior approval of the accepting official before making any modifications to the plan;

(2) Maintain accounting records for each asset subject to loss deferral under the program that document the amount and timing of the deferrals, repayments, and authorizations;

(3) Maintain the financial condition of the bank so that it does not deteriorate to the point where it is no longer a viable, fundamentally sound institution;

(4) Make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans, including agriculturally-related other property, not less than the percentage of such loans in its loan portfolio on January 1, 1986; and

(5) Provide the accepting official, upon request, with any information the accepting official deems necessary to monitor the bank's amortization, its compliance with the conditions of participation, and its continued eligibility.

(e) *Revocation of eligibility for loss amortization.* The failure to comply with any condition in an acceptance, with the capital restoration plan, or with the conditions stated in paragraph (d) of this section, is grounds for revocation of acceptance for loss amortization and for an administrative action against the bank under 12 U.S.C. 1818(b). In addition, acceptance of a bank for loss amortization shall not foreclose any administrative action against the bank that the Board may deem appropriate.

(f) *Expiration date.* The terms of this section will no longer be in effect as of January 1, 1999.