

(v) Schedule RI-B (Charge-offs and Recoveries and Changes in Allowance for Loan and Lease Losses)—Part I may be omitted; or

(3) In the case of a bank required to file statements and reports pursuant to the Board's Regulation H, a copy of the bank's annual report to shareholders for meetings at which directors are to be elected or the bank's annual report; or

(4) In the case of a bank with independently audited financial statements, copies of the audited financial statements and the certificate or report of the independent accountant if such statements contain information for the two most recent year ends comparable to that specified in paragraph (d)(2) of this section; or

(5) In the case of a bank that is the only bank subsidiary of a bank holding company, that is majority owned by that bank holding company, and that has assets equal to 95 percent or more of the bank holding company's consolidated total assets, a copy of either:

(i) The annual report of the bank holding company prepared in conformity with the regulations of the Securities and Exchange Commission; or

(ii) If the holding company has consolidated assets of \$150 million or more, the sections in the bank holding company's consolidated financial statements for the most recent year end and the prior year end on Form FR-Y-9C ("Consolidated Financial Statements for Bank Holding Companies With Total Consolidated Assets of \$150 Million or More, or With More Than One Subsidiary Bank" (OMB control number 7100-0128)) prepared pursuant to the Board's Regulation Y, and comparable to the Call Report schedules enumerated in paragraph (d)(2) of this section.

(e) *Financial information to be provided by other covered institutions.* Other covered institutions shall fulfill the requirements of this section by providing, upon request, at least one free copy to each requestor of the following schedules from the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (OMB control number 7100-0032) for the most recent year end and the prior year end:

(1) Schedule RAL (Assets and Liabilities);

(2) Schedule E (Deposit Liabilities and Credit Balances);

(3) Schedule P (Other Borrowed Money).

The institution shall make the information available as soon as is reasonably possible but not later than April 1 of the year immediately following the end of the year to which the most recently available information pertains.

(f) *Disclaimer.* The following legend shall be included with any financial information provided pursuant to this section:

This financial information has not been reviewed, or confirmed for accuracy or relevancy, by the Federal Reserve System.

(g) This section is not intended to create a private right of action against any institution disclosing documents pursuant to this section.

[54 FR 6117, Feb. 8, 1989, as amended at Reg. H, 59 FR 55988, Nov. 10, 1994]

§ 208.18 Appraisal standards for federally related transactions.

The standards applicable to appraisals rendered in connection with federally related transactions entered into by state member banks are set forth in subpart G of the Board's Regulation Y, 12 CFR part 225.

[55 FR 27771, July 5, 1990]

§ 208.19 Payment of dividends.

(a) *Capital limitations on payment of dividends.* No state member bank shall, during the time it continues its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by a state member bank that equal or exceed its undivided profits then on hand, no dividend shall be paid. No dividend shall be paid by a state member bank while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts.

(1) *Exceptions.* Exceptions to the limitations contained in this paragraph (a) may be made only with the prior approval of the Board and of at least two-thirds of the shares of each class of stock outstanding.

(2) *Dividends on common and preferred stock.* The provisions of this paragraph (a) shall apply to the payment of dividends on both common and preferred stock.

(3) *Bad debt.* Under this paragraph (a), bad debts must be deducted from the net profits then on hand in computing funds available for the payment of dividends. The term *bad debt* includes matured obligations due a bank on which the interest is past due and unpaid for six months unless the debts are well secured and in the process of collection. Obligations include every type of indebtedness owed to the bank, including, for example, loans, investment securities, time deposits in other depository institutions, and leases. The six-month period of default may begin at any time, regardless of when the debt matures.

(i) *Matured debt.* Whether a debt has matured for the purposes of this subsection usually will be determined by applicable contract law. Generally, a debt is matured when all or a part of the principal is due and payable as a result of demand, arrival of the stated maturity date, or acceleration by contract or by operation of law. Nevertheless, any demand debt on which the payment of interest is six months past due will be considered matured even though payment on the debt has not been demanded. Installment loans on which any payment is six months past due will be considered matured even though acceleration of the total debt may not have occurred.

(ii) *Well-secured debt.* A debt is well secured if it is secured by collateral in the form of liens on, or pledges of, real or personal property, including securities, having realizable value sufficient to discharge the debt in full, or by the guaranty of a financially responsible party. If a loan that would otherwise be considered a bad debt is partially secured, that portion not properly secured will be considered a bad debt.

(iii) *Debt in process of collection.* A debt is in the process of collection if collection of the debt is proceeding in due course, either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are

reasonably expected to result in repayment of the debt or in its restoration to current status. In any case, the bank should have a plan of collection setting forth the reasons for the selected method of collection, the responsibilities of the bank and the borrower, and the expected date of repayment of the debt or its restoration to current status.

(iv) *Debts of bankrupt or deceased debtors.* A claim duly filed against the estate of a bankrupt or deceased debtor is considered as being in the process of collection. The obligation is well secured if it meets the criteria set forth in paragraph (a)(3)(ii) of this section or if the claim of the bank against the estate has been duly filed and the statutory period for filing has expired and the assets of the estate are adequate to discharge all obligations in full.

(v) *Documentation.* The bank must maintain in its files documentation to support its evaluation of the obligation. In addition, the bank must retain, at a minimum, monthly progress reports on its collection efforts, noting and explaining any deviation from the collection plan.

(4) *Undivided profits then on hand.* For the purpose of this section, the terms *undivided profits then on hand* and *net profits then on hand* shall have the same meaning, and shall be referred to herein as *undivided profits then on hand*.

(i) *Allowance for loan and lease losses.* When calculating the amount of dividends a bank can pay under 12 U.S.C. 56 and this paragraph, the bank may not add the balance in its allowance for loan and lease losses to its undivided profits for the purpose of determining undivided profits then on hand. The terms *allowance for loan and lease losses* and *undivided profits* shall have the same meaning as set forth in the instructions for the Reports of Condition and Income.

(ii) *Bad debts.* When deducting its bad debts from its undivided profits then on hand, a bank shall first subtract the sum of its bad debts from the balance of its allowance for loan and lease losses account. If the sum of a bank's bad debts is greater than its allowance for loan and lease losses, the excess bad debt shall then be deducted from the bank's undivided profits then on hand.

(iii) *Surplus surplus*. State member banks are required to comply with state law provisions concerning the maintenance of surplus funds in addition to common capital. To the extent a bank has capital surplus in excess of that required under applicable state law, the bank has *surplus surplus*. Only that portion of the surplus surplus that meets the following conditions may be transferred to the undivided profits account and be available for the payment of dividends:

(A) The bank's board of directors approves the transfer of funds from capital surplus to undivided profits; and

(B) The transfer has been approved by the Board. The bank must be able to demonstrate to the Board that the portion of the surplus surplus to be transferred came from the earnings of prior periods, excluding earnings transferred as a result of stock dividends. Requests for Board approval shall be submitted to the appropriate Federal Reserve Bank. The bank may consider the transfer to be approved if the Board or the Reserve Bank does not notify the bank within thirty days after the Reserve Bank's receipt of the notice that the transfer has been disapproved or that it is subject to continuing consideration.

(b) *Earnings limitations on payment of dividends*. A state member bank may not pay a dividend if the total of all dividends declared by the bank in any calendar year exceeds the total of its net profits for that year combined with its retained net profits of the preceding two calendar years, less any required transfers to surplus or to a fund for the retirement of any preferred stock, unless the bank has received the prior approval of the Board for the dividend under paragraph (b)(3) of this section.

(1) *Dividends on common and preferred stock*. The provisions of this paragraph (b) apply to the payment of dividends on both preferred and common stock.

(2) *Net profits*. *Net profits* shall be equal to the net income or loss as reported by a state member bank in its Reports of Condition and Income. When computing its *net profits* under this section, a bank should not add its provisions for loan and lease losses to, nor deduct net charge offs from, its reported net income.

(3) *Retained net profits*. Retained net profits of any period shall be equal to the net income or loss as reported in the Reports of Condition and Income less any common or preferred stock dividends declared or otherwise charged to the undivided profits of the period for which retained net profits are computed.

(4) *Approval of dividends*. A bank must request and receive the approval of the Board before declaring a dividend if the amount of all dividends (common and preferred), including the proposed dividend, declared by the bank in any calendar year exceeds the total of the bank's net profits of that year to date combined with its retained net profits of the preceding two calendar years, less any required transfers to surplus or a fund for the retirement of any preferred stock. Requests for the Board's approval shall be submitted to the appropriate Federal Reserve Bank.

(5) *Effective date and transition provisions*. (i) For the purpose of computing *net profits* pursuant to 12 U.S.C. 60, a state member bank must apply paragraph (b)(2) of this section no later than January 1, 1991. A bank may elect to use this paragraph (b)(2) of this section to calculate net profits for 1990, if it applies this provision on a full calendar year to date basis.

(ii) Whether a bank chooses to use paragraph (b)(2) of this section beginning as of January 1, 1990 or 1991, it may elect to apply the paragraph (b)(2) of this section to recalculate retained net profits for one or both of the prior two years.

(iii) Once a bank has elected to calculate net profits or retained net profits for a particular year applying the provisions of paragraph (b)(2) of this section, retained net profits and net profits for all subsequent periods in the calculation must also be calculated using paragraph (b)(2) of this section. If a state member bank has elected to use paragraph (b)(2) of this section for a particular year, the bank may not change the method of calculation used for that year during subsequent periods.

[55 FR 52986, Dec. 26, 1990]