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amount of any indebtedness incurred by any such corporation that is an affiliate of the bank (as defined in section 2 of the Banking Act of 1933, as amended, 12 U.S.C. 221a), is less than or equal to the bank's perpetual preferred stock and related surplus plus common stock plus surplus, as those terms are defined in the FFIEC Consolidated Reports of Condition and Income; or

(3)(i) The aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank, is less than or equal to 150 percent of the bank's perpetual preferred stock and related surplus plus common stock plus surplus, as those terms are defined in the FFIEC Consolidated Reports of Condition and Income; and

(ii) The bank:

(A) Has a CAMELS composite rating of 1 or 2 under the Uniform Interagency Bank Rating System[5] (or an equivalent rating under a comparable rating system) as of the most recent examination of the bank; and

(B) Is well capitalized and will continue to be well capitalized, in accordance with subpart D of this part, after the investment or loan.

(b) *Investments in securities.* Member banks are subject to the same limitations and conditions with respect to purchasing, selling, underwriting, and holding investment securities and stocks as are national banks under 12 U.S.C. 24, ¶7th. To determine whether an obligation qualifies as an investment security for the purposes of 12 U.S.C. 24, ¶7th, and to calculate the limits with respect to the purchase of such obligations, a state member bank may look to part 1 of the rules of the Comptroller of the Currency (12 CFR part 1) and interpretations thereunder. A state member bank may consult the Board for a determination with respect to the application of 12 U.S.C. 24, ¶7th, with respect to issues not addressed in 12 CFR part 1. The provisions of 12 CFR part 1 do not provide authority for a state member bank to purchase securities of a type or amount that the bank is not authorized to purchase under applicable state law.

[5] *See* FRRS 3–1575 for an explanation of the Uniform Interagency Bank Rating System. (For availability, see 12 CFR 261.10(f).)

### § 208.22 Community development and public welfare investments.

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

(1) *Low- or moderate-income area* means:

(i) One or more census tracts in a Metropolitan Statistical Area where the median family income adjusted for family size in each census tract is less than 80 percent of the median family income adjusted for family size of the Metropolitan Statistical Area; or

(ii) If not in a Metropolitan Statistical Area, one or more census tracts or block-numbered areas where the median family income adjusted for family size in each census tract or block-numbered area is less than 80 percent of the median family income adjusted for family size of the State.

(2) *Low- and moderate-income persons* has the same meaning as low- and moderate-income persons as defined in 42 U.S.C. 5302(a)(20)(A).

(3) *Small business* means a business that meets the size-eligibility standards of 13 CFR 121.802(a)(2).

(b) *Investments not requiring prior Board approval.* Notwithstanding the provisions of section 5136 of the Revised Statutes (12 U.S.C. 24, ¶7th) made applicable to member banks by paragraph 20 of section 9 of the Federal Reserve Act (12 U.S.C. 335), a member bank may make an investment, without prior Board approval, if the following conditions are met:

(1) The investment is in a corporation, limited partnership, or other entity, and:

(i) The Board has determined that an investment in that entity or class of entities is a public welfare investment under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a), or a community development investment under Regulation Y (12 CFR 225.25(b)(6)); or

(ii) The Comptroller of the Currency has determined, by order or regulation, that an investment in that entity by a national bank is a public welfare investment under section 5136 of the Revised Statutes (12 U.S.C. 24 (Eleventh)); or

(iii) The entity is a community development financial institution as defined in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)); or

(iv) The entity, directly or indirectly, engages solely in or makes loans solely for the purposes of one or more of the following community development activities:

(A) Investing in, developing, rehabilitating, managing, selling, or renting residential property if a majority of the units will be occupied by low- and moderate-income persons, or if the property is a ''qualified low-income building'' as defined in section 42(c)(2) of the Internal Revenue Code (26 U.S.C. 42(c)(2));

(B) Investing in, developing, rehabilitating, managing, selling, or renting nonresidential real property or other assets located in a low- or moderate-income area and targeted towards low- and moderate-income persons;

(C) Investing in one or more small businesses located in a low- or moderate-income area to stimulate economic development;

(D) Investing in, developing, or otherwise assisting job training or placement facilities or programs that will be targeted towards low- and moderate-income persons;

(E) Investing in an entity located in a low- or moderate-income area if the entity creates long-term employment opportunities, a majority of which (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 investment 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 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