

## Comptroller of the Currency, Treasury

## § 18.4

(b) Filing fees must be paid by check payable to the Comptroller of the Currency.

### PART 18—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION BY NATIONAL BANKS

Sec.

- 18.1 Purpose and OMB control number.
- 18.2 Definitions.
- 18.3 Preparation of annual disclosure statement.
- 18.4 Contents of annual disclosure statement.
- 18.5 Alternative annual disclosure statements.
- 18.6 Signature and attestation.
- 18.7 Notice of availability.
- 18.8 Delivery.
- 18.9 Disclosure of examination reports.
- 18.10 Prohibited conduct and penalties.
- 18.11 Safe harbor provision.

AUTHORITY: 12 U.S.C. 93a, 161, and 1818.

SOURCE: 53 FR 3866, Feb. 10, 1988, unless otherwise noted.

#### § 18.1 Purpose and OMB control number.

(a) *Purpose.* The purpose of this part is to require all national banks and federal branches and agencies to prepare an annual financial disclosure statement, and to make this statement available to security holders, depositors, and anyone who requests it. The bank may, at its option, supplement this financial disclosure statement with narrative information management deems important. The availability of this information is expected to promote better public understanding of, and confidence in, individual national banks and the national banking system. The annual disclosure statement will serve to complement the supervisory efforts of the Office of the Comptroller of the Currency (OCC) to promote bank safety and soundness and public confidence in the national banking system.

(b) *OMB control number.* The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557-0182.

[53 FR 3866, Feb. 10, 1988, as amended at 60 FR 57332, Nov. 15, 1995]

#### § 18.2 Definitions.

Unless otherwise defined in this part, the terms used have the same meaning as in the instructions to the Consolidated Reports of Condition and Income (*Call Reports*).

#### § 18.3 Preparation of annual disclosure statement.

(a) Beginning with calendar year 1987, each national bank and federal branch and agency shall prepare an annual disclosure statement as of December 31. The annual disclosure statement shall contain information required by § 18.4 (a), (b) and (d) may include other information that bank management believes important, as discussed in § 18.4(c).

(b) The annual disclosure statement shall be available by March 31 of each year, or by an earlier date as necessary to be made available to security holders in advance of the annual meeting of shareholders. A bank shall continually make its annual disclosure statement available until the annual disclosure statement for the succeeding year becomes available.

#### § 18.4 Contents of annual disclosure statement.

(a) *Information concerning financial condition and results of operations.* The annual disclosure statement for any year shall reflect a fair presentation of the bank's financial condition at the end of that year and the preceding year. The annual disclosure statement may, at the option of bank management, consist of the bank's entire Call Reports, or applicable portions thereof, for the relevant periods. At a minimum, the statement must contain the same or comparable information as provided in the following Call Report schedules.

(1) For national banks:

- (i) Schedule RC (Balance Sheet);
- (ii) Schedule RC-N (Past Due and Nonaccrual Loans, Leases, and Other Assets—column A and memorandum Item #1 need not be included);
- (iii) Schedule RI (Income Statement);
- (iv) Schedule RI-A (Changes in Equity Capital); and
- (v) Schedule RI-B (Charge-Offs and Recoveries and Changes in Allowance

## § 18.5

## 12 CFR Ch. I (1–1–15 Edition)

for Loan and Lease Losses—part I may be omitted).

(2) For federal branches or agencies:

(i) Schedule RAL (Assets and Liabilities);

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

(iii) Schedule P (Other Borrowed Money).

(b) *Other required information.* The annual disclosure statement shall include such other information as the OCC may require. This may include a discussion of enforcement actions when the OCC deems it in the public interest.

(c) *Optional narrative.* Bank management may, at its option, provide a narrative discussion to supplement the annual disclosure statement. This narrative may include information that bank management deems important in evaluating the overall condition of the bank. Information that bank management might present includes, but is not limited to, a discussion of the financial data; pertinent information relating to mergers and acquisitions; the existence and underlying causes of enforcement actions; business plans; material changes in balance sheet and income statement items; and future plans.

(d) *Disclaimer.* The following legend shall be included in the annual disclosure statement to advise the public that the OCC has not reviewed the information contained therein:

This statement has not been reviewed, or confirmed for accuracy or relevance by the Office of the Comptroller of the Currency.

[53 FR 3866, Feb. 10, 1988, as amended at 60 FR 57332, Nov. 15, 1995]

### § 18.5 Alternative annual disclosure statements.

The § 18.3(a) requirement to prepare an annual disclosure statement is satisfied:

(a) In the case of a national bank having a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781), by its annual report to security holders for meetings at which directors are to be elected;

(b) In the case of a national bank with audited financial statements, by those statements, provided all of the required information is included;

(c) In the case of a bank subsidiary of a one-bank holding company, by an annual report of the one-bank holding company prepared in conformity with the regulations of the Securities and Exchange Commission or by schedules from the holding company's consolidated financial statements on Form FR Y-9c pursuant to Regulation Y of the Federal Reserve Board (12 CFR part 225). Such schedules must be comparable to the Call Report schedules enumerated in § 18.4(a). In either case, not less than 95 percent of the holding company's consolidated total assets and total liabilities must be attributable to the bank and the bank's subsidiaries.

[53 FR 3866, Feb. 10, 1988, as amended at 60 FR 57332, Nov. 15, 1995]

### § 18.6 Signature and attestation.

A duly authorized officer of the bank shall sign the annual disclosure statement and shall attest to the correctness of the information contained in the statement if the financial reports are not accompanied by a report of an independent accountant.

### § 18.7 Notice of availability.

(a) *Shareholders.* In its notice of the annual meeting of shareholders, each national bank shall indicate that any person may obtain the annual disclosure statement from the bank, and shall include the address and telephone number of the person or office to be contacted for a copy. The first copy shall be provided without charge.

(b) *Depositors, Other Security Holders, and the General Public.* In the lobby of its main office and each branch, each national bank shall prominently display, at all times, a notice that any person may obtain the annual disclosure statement from the bank. The notice shall include the address and telephone number of the person or office to be contacted for a copy. The first copy shall be provided without charge.

### § 18.8 Delivery.

Each national bank shall, after receiving a request for an annual disclosure statement, promptly mail or otherwise furnish the statement to the requester.

**§ 18.9 Disclosure of examination reports.**

Except as permitted under part 4 of this chapter, a national bank may not disclose any report of examination or report of supervisory activity, or any portion thereof, prepared by the OCC. The bank also shall not make any representation concerning such report or the findings therein.

[53 FR 3866, Feb. 10, 1988, as amended at 60 FR 57333, Nov. 15, 1995]

**§ 18.10 Prohibited conduct and penalties.**

(a) No national bank or institution-affiliated party shall, directly or indirectly:

(1) Disclose or cause to be disclosed false or misleading information in the annual disclosure statement, or omit or cause the omission of material or required information in the annual disclosure statement; or

(2) Represent that the OCC, or any employee thereof, has passed upon the accuracy or completeness of the annual disclosure statement.

(b) For purposes of this part, *institution-affiliated party* means:

(1) Any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, a national bank;

(2) Any other person who has filed or is required to file a change-in-control notice with the OCC under 12 U.S.C. 1817(j);

(3) Any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the OCC (by regulation or case-by-case) who participates in the conduct of the affairs of a national bank; and

(4) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in:

(i) Any violation of any law or regulation;

(ii) Any breach of fiduciary duty; or

(iii) Any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the national bank.

(c) Conduct that violates paragraph (a) of this section also may constitute

an unsafe or unsound banking practice or otherwise serve as a basis for enforcement action by the OCC including, but not limited to, the assessment of civil money penalties against the bank or any institution-affiliated party who violates this part.

[60 FR 57333, Nov. 15, 1995]

**§ 18.11 Safe harbor provision.**

The provisions of § 18.10(c) shall apply unless it is shown by the person or bank involved that the information disclosed was included with a reasonable basis or in good faith.

**PART 19—RULES OF PRACTICE AND PROCEDURE****Subpart A—Uniform Rules of Practice and Procedure**

Sec.

- 19.1 Scope.
- 19.2 Rules of construction.
- 19.3 Definitions.
- 19.4 Authority of the Comptroller.
- 19.5 Authority of the administrative law judge.
- 19.6 Appearance and practice in adjudicatory proceedings.
- 19.7 Good faith certification.
- 19.8 Conflicts of interest.
- 19.9 Ex parte communications.
- 19.10 Filing of papers.
- 19.11 Service of papers.
- 19.12 Construction of time limits.
- 19.13 Change of time limits.
- 19.14 Witness fees and expenses.
- 19.15 Opportunity for informal settlement.
- 19.16 OCC's right to conduct examination.
- 19.17 Collateral attacks on adjudicatory proceeding.
- 19.18 Commencement of proceeding and contents of notice.
- 19.19 Answer.
- 19.20 Amended pleadings.
- 19.21 Failure to appear.
- 19.22 Consolidation and severance of actions.
- 19.23 Motions.
- 19.24 Scope of document discovery.
- 19.25 Request for document discovery from parties.
- 19.26 Document subpoenas to nonparties.
- 19.27 Deposition of witness unavailable for hearing.
- 19.28 Interlocutory review.
- 19.29 Summary disposition.
- 19.30 Partial summary disposition.
- 19.31 Scheduling and prehearing conferences.
- 19.32 Prehearing submissions.