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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 24

[Docket No. 03-01]

RIN 1557-AC09

**Community And Economic Development Entities, Community Development
Projects, and Other Public Welfare Investments**

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend 12 CFR part 24, the regulation governing national bank investments that are designed primarily to promote the public welfare. This proposal updates the definition section of the regulation to reflect the additional types of public welfare investment structures that have become more common in recent years and that are permissible under the governing statute. The proposal also clarifies the statutory standard that applies to the activities of those entities; simplifies the standards for making public welfare investments; clarifies how a national bank calculates the value of its public welfare investments for purposes of complying with the rule's investment limits; simplifies the regulation's investment self-certification and prior approval processes; and expands the list of examples of qualifying public welfare investments that satisfy the rule's requirements. These changes are intended to encourage additional public welfare

investments by national banks by simplifying the regulation and further reducing unnecessary burden associated with part 24 investments.

DATES: Comments must be received [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please direct your comments to: Docket No. 03-01, Communications Division, Public Information Room, Mailstop 1-5, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit their comments by fax or by e-mail. You may send comments by fax to (202) 874-4448, or by electronic mail to regs.comments@occ.treas.gov. You can make an appointment to inspect and photocopy comments by calling (202) 874-5043.

FOR FURTHER INFORMATION CONTACT:

OCC: Michele Meyer, Counsel, Legislative and Regulatory Activities Division, (202) 874-5090; Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874-5750; or Barry Wides, Director, or Karen Bellesi, Investments Manager, Community Development Division, (202) 874-4930.

SUPPLEMENTARY INFORMATION:

I. Background

The OCC is proposing to amend 12 CFR part 24, which contains the rules relating to national banks' investments in community development corporations (CDCs), community development (CD) projects, and other public welfare investments. Part 24 implements 12 U.S.C. 24(Eleventh), which authorizes national banks to make investments designed primarily to promote the public welfare, including the welfare of

low- and moderate-income communities and families, subject to certain percentage-of-capital limitations. (The investments authorized by 12 U.S.C. 24(Eleventh) are collectively referred to in this proposal as “public welfare investments.”) The purpose of this proposal is to make it easier for national banks to use the public welfare investment authority that the statute and regulation provide, and to eliminate unnecessary regulatory burdens currently associated with the investment review and approval process.

The OCC originally adopted part 24 in 1993 and substantially revised the regulation in 1996.¹ The 1996 revisions encouraged national banks to make public welfare investments by eliminating unnecessarily burdensome provisions and streamlining the part 24 procedures. Among other things, the 1996 revisions: modified the test for determining whether an investment primarily promotes the public welfare; streamlined the procedures for investment self-certification (which permits an eligible bank² to make a public welfare investment and notify the OCC after-the-fact) and prior approval of investments; and expanded the list of activities eligible for self-certification.

In 1999, we revised part 24 further by simplifying the prior approval and self-certification requirements that apply to national banks’ public welfare investments, expanding the types of investments for which self-certification may be used by removing geographic restrictions, and permitting an eligible bank to self-certify in connection with any eligible public welfare investment.³

¹ See 58 FR 68464 (Dec. 27, 1993); and 61 FR 49654 (Sept. 23, 1996).

² An “eligible bank” is well capitalized; has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System and at least a “satisfactory” Community Reinvestment Act rating; and is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive. 12 CFR 24.2(e).

³ See 64 FR 31160 (June 10, 1999).

We are committed to continually reevaluating our rules to reduce unnecessary regulatory burden and simplify compliance, consistent with the safe and sound operation of national banks. Our experience since the 1999 revisions to part 24 has demonstrated the benefits of these efforts. In the year 2001, national banks self-certified compliance in 90 percent of all part 24 investments, compared with 65 percent in 1998. In the same year, national banks and their community partners committed \$995 million to part 24 investments, compared with \$1.7 million in 1998.

We believe that additional improvements to this regulation could further stimulate part 24 investments fully consistent with safety and soundness considerations. Toward that end, this proposal streamlines the rule to eliminate additional unnecessary regulatory burdens currently associated with the investment review and approval process, as described in greater detail in the next section of this preamble discussion. These changes are designed to further encourage national bank participation in the part 24 investment program, without compromising bank safety and soundness.

II. Description of the Proposal

Definitions (§ 24.2)

The proposal adds a new definition of “community and economic development entity.” The new definition of “community development entity” replaces the current definition of “community development corporation.” A community development corporation is defined in the current regulation as a corporation established by one or more insured financial institutions (with or without other investors) “to make one or more

investments that meet the requirements of § 24.3.”⁴ The proposal defines a community and economic development entity (CDE) as an entity -- such as a national bank community development subsidiary, community development financial institution, limited liability company, or limited partnership -- that makes investments or conducts activities that primarily benefit low- and moderate-income individuals or areas or other areas targeted for redevelopment.

The proposed definition of CDE better reflects the scope of 12 U.S.C. 24(Eleventh), which permits a national bank to “make [public welfare] investments directly or by purchasing interests in *an entity* primarily engaged in making such investments.” 12 U.S.C. 24(Eleventh) (emphasis added). The language of the statute does not restrict the entities in which a national bank may invest to a particular form of organization, provided the investing bank is not exposed to unlimited liability. Nor does the legislative history suggest that any such restriction was intended. Accordingly, the OCC has interpreted Section 24(Eleventh) broadly, permitting a national bank to invest in a variety of entities that make public welfare investments themselves or that use a national bank’s investment to support other types of public welfare activities.⁵ The proposed definition of CDE is consistent with this long-standing interpretation of the statute.

Public Welfare Investments (§ 24.3)

⁴ 12 CFR 24.2(c). Current § 24.3 sets forth the criteria for a public welfare investment, including that the investment primarily benefits low-and moderate-income individuals or areas or other areas targeted for redevelopment, and that the bank demonstrates non-bank community support for the investment.

⁵ The annual OCC Directory of National Bank Community Development Investments lists numerous public welfare activities conducted by CDEs, such as the development of affordable housing, job creation, and commercial revitalization. For the most recent examples of such activities, see “National Bank Community Development Investments, 2001 Directory.”

Section 24(Eleventh) authorizes national banks to make investments “designed primarily to promote the public welfare, including the welfare of low-and moderate-income communities or families (such as through the provision of housing, services, or jobs).” Current § 24.3 implements this authority by providing that a national bank may make an investment under part 24 if two conditions are met. The first, set forth in current § 24.3(a), requires that the investment primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment⁶ by providing or supporting one or more of four enumerated public welfare activities.⁷ The second condition, set forth in current § 24.3(b), requires the bank to demonstrate non-bank community support for, or participation in, the investment.⁸ The proposal simplifies the text of the first condition and deletes the second.

Under proposed § 24.3, a national bank may make a part 24 investment if the investment primarily benefits low- and moderate-income individuals or areas or other areas targeted for redevelopment by governmental entities.⁹ The proposal deletes the four enumerated public welfare activities set forth in current § 24.3(a)(1)-(4). The list is

⁶ Under the current regulation, redevelopment areas are those targeted for redevelopment by “local, state, tribal or Federal government (including Federal enterprise communities and Federal empowerment zones). . . .” 12 CFR 24.3(a).

⁷ These include affordable housing, equity or debt financing for small businesses, area revitalization or stabilization, and “other activities, services, or facilities that primarily promote the public welfare.” 12 CFR 24.3(a).

⁸The current rule permits banks to demonstrate community support by, for example, having non-bank community representatives as members of the board of directors of a CDE or on a separate advisory board for the bank’s community development activities; formation of formal business relationships between the bank and a community organization; contractual agreements with community partners to provide services in connection with the proposed investment; joint ventures with local small businesses; and financing for the proposed investment from the public sector or community development organizations or the receipt of Federal low-income housing tax credits by the project in which the investment is made. 12 CFR 24.3(b).

⁹ Because the purposes and requirements of Section 24(Eleventh) and the Community Reinvestment Act are different, a part 24 investment does not necessarily qualify for consideration under the Community Reinvestment Act. For example, the Community Reinvestment Act limits the areas in which a bank may invest based on location and income levels, whereas part 24 places no geographic restrictions on a bank’s public welfare investment and permits a bank to make an investment in an area that is not low- or moderate-income (provided the area has been targeted for redevelopment).

merely illustrative of the types of investments a national bank may make under this part. It appears unnecessary in light of § 24.6, which sets forth examples of public welfare investments a national bank may make under this part (see the discussion that follows of proposed changes to § 24.6, including additional examples of permissible investments).

The OCC is also proposing to delete the community support demonstration requirement set forth in current § 24.3(b) because it is not required by statute or the comparable rules that apply to other financial institutions that have Federal statutory investment authority similar to Section 24(Eleventh)¹⁰ and may limit a bank's flexibility in making public welfare investments by hinging the permissibility of the investment on factors other than the nature and purpose of the investment. Moreover, the OCC's experience in implementing part 24 suggests that investments that otherwise meet the requirements of part 24 will receive the support of the communities benefited.

Investment Limits (§ 24.4)

Section 24.4 of the current rule implements the investment limits imposed by 12 U.S.C. 24(Eleventh). Under both the regulation and the statute, a national bank's aggregate public welfare investments may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the OCC determines that a higher amount will pose no significant risk to the deposit insurance fund. In no case, however, may a bank's aggregate outstanding part 24 investments exceed 10 percent of its capital and surplus.

The proposal amends § 24.4 to clarify that a bank should follow generally accepted accounting principles (GAAP) when calculating the aggregate amount of its part

24 investments, unless otherwise directed or permitted in writing by the OCC for prudential or safety and soundness reasons. Those reasons could exist, for example, if GAAP accounting permits a financially weak bank to increase investments in an unprofitable CDE.

Public Welfare Self-Certification and Prior Approval Procedures (§ 24.5)

Currently, an eligible national bank may make qualifying public welfare investments without prior notification to, or approval by, the OCC by submitting a self-certification letter to the OCC within 10 working days after it makes the investment. For all other investments under part 24, a national bank must apply to the OCC for prior approval of an investment proposal. Unless otherwise notified in writing by the OCC, the proposed investment is deemed approved 30 calendar days from the date on which the OCC receives the proposal application.¹¹

To emphasize that eligible national banks are not required to seek prior approval of public welfare investments that meet the requirements of §§ 24.3 and 24.4, the proposal changes the title of § 24.5 to “Public welfare investment after-the-fact notice and prior approval procedures,” and references in the section to “self-certification” are changed to “after-the-fact notice.” The OCC further proposes to simplify the part 24 investment notification processes and make them more consistent with the notification processes established under 12 CFR part 5 for certain equity investments.

Currently, § 24.5(a) requires that a bank’s self-certification letter include: (i) the name of the CDC, CD Project, or other entity in which the bank has invested; (ii) the date

¹⁰ We note that the Federal Reserve Board’s community development regulation (12 CFR 208.22) implements nearly identical statutory authority (12 U.S.C. 338a) and does not require the demonstration of community support for an investment.

¹¹ See 12 CFR 24.5 and 24.6.

the investment was made; (iii) the type of investment (equity or debt), the investment activity listed in § 24.3(a) that the investment primarily supports, and a brief description of the particular investment; (iv) the amount of the bank’s total investment in the CDC, CD Project, or other entity, and the bank’s aggregate outstanding part 24 investments, including the investment being self-certified; (v) the percentage of the bank’s capital and surplus represented by the bank’s aggregate outstanding part 24 investments, including the investment being self-certified; and (vi) a statement certifying compliance with the requirements of § 24.3 and § 24.4. In this respect, part 24 currently calls for significantly more detail than the procedures prescribed by part 5 that apply where a national bank makes other types of permissible equity investments. Under part 5, a national bank’s written after-the-fact notice of certain equity investments must set forth simply “a description, and the amount, of the bank’s investment.”¹²

The proposal revises § 24.5 to make it more consistent with the part 5 equity investment notification procedures and to remove unnecessary administrative impediments to national bank public welfare investments. The proposal removes the first three elements currently required in a bank’s self-certification letter (set forth at current § 24.5(a)(3)(i)-(iii)) to give a bank the flexibility to determine how best to describe a particular investment and to emphasize that such a description may be brief. The proposal also removes the requirement (set forth at current § 24.5(a)(3)(iv)) that a bank provide the amount of its aggregate outstanding part 24 investments because this element is redundant in light of the required certification of compliance with the investment limits set forth in § 24.4.

¹² See 12 CFR 5.36(d)(2).

Thus, the proposal provides that a national bank may make an investment without prior notification to the OCC if the bank submits an after-the-fact notice to the OCC that includes: (i) a description of the bank’s investment; (ii) the amount of the investment; (iii) the percentage of the bank’s capital and surplus represented by the investment being self-certified and by the bank’s aggregate outstanding public welfare investments; and (iv) a certification that the investment complies with the requirements of §§ 24.3 and 24.4. The proposal also applies these modified requirements to the investment prior approval process described in § 24.5(b).¹³ The OCC expects the after-the-fact notices and the investment proposals submitted in accordance with these modified requirements will be significantly shorter than the materials submitted under the current rule.¹⁴

Examples of Qualifying Public Welfare Investments (§ 24.6)

The proposal revises § 24.6 to provide additional examples of the types of investments that meet the requirements of § 24.3. For ease of reference, this list is organized by type of activity (such as affordable housing, economic development and job creation, and investments in CDEs). This list is illustrative of the types of investments a bank may make under this part, and national banks are not limited to the listed investments in creating or expanding their public welfare investment programs.¹⁵

¹³ The proposal does not change the triggers for the prior approval process. Thus, a bank that is ineligible for the after-the-fact notice process must seek prior approval of its investments under 12 CFR § 24.5(b)(1), unless the OCC has given it permission to use the after-the-fact notice process under 12 CFR § 24.5(a)(4). An eligible bank must seek prior approval of: investments that would exceed the five percent investment limit; investments in other real estate owned; or other investments determined by the OCC to be ineligible for the after-the-fact notice process. 12 CFR §§ 24.4 and 24.5(a)(5).

¹⁴ The OCC expects to revise the sample forms for investment notification and prior approval to reflect this expectation. These sample forms will be available through the OCC’s Community Development Division, (202) 874-4930.

¹⁵ For more examples of the types of investments a bank may make under part 24, see “National Bank Community Development Investments, 2000 Directory.”

Conforming Amendments

As we have explained, the proposal changes the definition of “community development corporation” to “community and economic development entity” to better reflect the range of investment vehicles that may be used for making part 24 investments. The proposal revises the title of part 24 to reflect this change. Thus, the proposed title is “Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments.”

The proposal also revises the authority statement of the rule (§ 24.1) to refer to “community and economic development entities” rather than “community development corporations.”

III. Comments

The OCC requests comment on all aspects of this proposal, including the extent to which these proposed changes will encourage more national banks to make public welfare investments. Commenters are also invited to suggest other revisions that would simplify the standards or streamline the procedures currently contained in part 24.

IV. Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

V. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106-102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

VI. Regulatory Flexibility Act

An agency must prepare a Regulatory Flexibility Analysis if a rule it proposes will have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605. If, after an analysis of a rule, an agency determines that the rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) provides that the head of the agency may so certify.

The OCC has reviewed the impact this proposed rule will have on small national banks. For purposes of this Regulatory Flexibility Analysis and proposed regulation, the

OCC defines “small national banks” to be those banks with less than \$150 million in total assets. Based on that review, the OCC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal would reduce regulatory burden on all national banks by simplifying the requirements and procedures applicable to part 24 investments. The economic impact of this proposal on national banks, regardless of size, is not expected to be significant, though some national banks may benefit from a modest reduction in compliance costs.

VII. Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

VIII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, this rulemaking requires no further analysis under the Unfunded Mandates Act.

IX. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in this notice of proposed rulemaking have been submitted to OMB for review and approval under OMB Control Number 1557-0194.

The revisions of the information collections contained in the notice of proposed rulemaking are expected to reduce annual paperwork burden for respondents because it eliminates certain application and notification requirements. The information collection requirements in this notice of proposed rulemaking are contained in §§ 24.5(a) and 24.5(b). Section 24.5(a) requires a national bank to submit an after-the-fact notice of public welfare investments to the OCC. The time per response to complete an after-the-fact notice is estimated to be 1.5 hours and the number of respondents is estimated to be 195 national banks. Section 24.5(b) requires a national bank to submit an investment proposal to the OCC if the bank does not meet the requirements for after-the-fact notification. The time per response to complete an investment proposal is estimated to be 1.5 hours and the number of respondents is estimated to be 22.

Section 24.5(a)(4) contains an existing requirement for certain national banks to submit a letter requesting authority to submit after-the-fact notices of their investments. The time per response is approximately 30 minutes and the number of respondents is estimated to be four.

The likely respondents are national banks.

Estimated number of respondents: 221 hours.

Estimated number of responses: 221 responses.

Estimated total burden hours: 327.5 hours.

The OCC invites comments on:

(1) Whether the collection of information contained in the proposed rulemaking is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be sent to:

Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, Legislative and Regulatory Activities Division, Attention: 1557-0194, 250 E Street, SW, Mailstop 8-4, Washington, DC, 20219. Due to delays in paper mail in the Washington area, commenters are encouraged to submit their comments by fax to 202-874-4889 or by e-mail to jessie.dunaway@occ.treas.gov.

Joseph F. Lackey, Jr., Desk Officer, Office of Information and Regulatory Affairs, Attention: 1557-0194, Office of Management and Budget, Room 10235, Washington, DC 20503. Comments may also be sent by e-mail to jlackeyj@omb.eop.gov.

List of Subjects in 12 CFR Part 24

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend part 24 of chapter I of title 12 of the Code of Federal Regulations as follows:

1-2. Revise the part heading of part 24 to read as follows:

PART 24 – COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

3. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

4. In part 24, revise all references to “community development corporation” and “CDC” to read “community and economic development entity” and “CDE.”

5. In § 24.2, revise paragraph (c) to read as follows:

§ 24.2 Definitions.

* * * * *

(c) Community and economic development entity (CDE) means an entity that makes investments or conducts activities that primarily benefit low- and moderate-

income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment. The following is a non-exclusive list of examples of the types of entities that may be CDEs:

- (1) National bank community development corporation subsidiaries;
- (2) Private or nonbank community development corporations;
- (3) CDFI Fund-certified Community Development Financial Institutions or Community Development Entities;
- (4) Limited liability companies or limited partnerships;
- (5) Community development loan funds or lending consortia;
- (6) Community development real estate investment trusts;
- (7) Business development companies;
- (8) Community development closed-end mutual funds;
- (9) Non-diversified closed-end investment companies; and
- (10) Community development venture or equity capital funds.

* * * * *

6. Revise § 24.3 to read as follows:

§ 24.3 Public welfare investments.

A national bank may make an investment under this part if the investment primarily benefits low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment.

7. In § 24.4, revise paragraph (a) to read as follows:

§ 24.4 Investment limits.

(a) Limits on aggregate outstanding investments. A national bank's aggregate outstanding investments under this part may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the OCC determines, by written approval of the bank's proposed investment pursuant to § 24.5(b), that a higher amount will pose no significant risk to the deposit insurance fund. In no case may a bank's aggregate outstanding investments under this part exceed 10 percent of its capital and surplus. When calculating the aggregate amount of its aggregate outstanding investments under this part, a national bank should follow generally accepted accounting principles, unless otherwise directed or permitted in writing by the OCC for prudential or safety and soundness reasons.

* * * * *

8. In § 24.5: a. Revise the section heading; b. revise paragraph (a); and; c. revise paragraphs (b)(1) and (b)(2) to read as follows:

§ 24.5 Public welfare investment after-the-fact notice and prior approval procedures.

(a) After-the-fact notice of public welfare investments. (1) Subject to § 24.4(a), an eligible bank may make an investment authorized by 12 U.S.C. 24(Eleventh) and this part without prior notification to, or approval by, the OCC if the bank follows the after-the-fact notice procedures described in this section.

(2) An eligible bank shall provide an after-the-fact notification of an investment, within 10 working days after it makes the investment, to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(3) The bank's after-the-fact-notice must include:

(i) A description of the bank's investment;

(ii) The amount of the investment;

(iii) The percentage of the bank's capital and surplus represented by the current investment being self-certified and by the bank's aggregate outstanding public welfare investments, including the investment that is the subject of the after-the-fact notice; and

(iv) A statement certifying that the investment complies with the requirements of §§ 24.3 and 24.4.

(4) A national bank that is not an eligible bank but that is at least adequately capitalized, and has a composite rating of at least 3 with improving trends under the Uniform Financial Institutions Rating System, may submit a letter to the Community Development Division requesting authority to submit after-the-fact notices of its investments. The Community Development Division considers these requests on a case-by-case basis.

(5) Notwithstanding the provisions of this section, a bank may not submit an after-the-fact notice of an investment if:

(i) The investment involves properties carried on the bank's books as "other real estate owned"; or

(ii) The OCC determines, in published guidance, that the investment is inappropriate for after-the-fact notice.

(b) Investments requiring prior approval. (1) If a national bank does not meet the requirements for after-the-fact investment notification set forth in this part, the bank

must submit an investment proposal to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) The bank's investment proposal must include:

(i) A description of the bank's investment;

(ii) The amount of the investment;

(iii) The percentage of the bank's capital and surplus represented by the proposed investment and by the bank's aggregate outstanding public welfare investments, including the proposed investment; and

(iv) A statement certifying that the investment complies with the requirements of §§ 24.3 and 24.4.

* * * * *

9. Revise § 24.6 to read as follows:

§ 24.6 Examples of qualifying public welfare investments.

Investments that primarily support the following types of activities are examples of investments that meet the requirements of § 24.3:

(a) Affordable housing activities, including:

(1) Investments in an entity that finances, acquires, develops, rehabilitates, manages, sells, or rents housing primarily for low- and moderate-income individuals;

(2) Investments in a project that develops or operates transitional housing for the homeless;

(3) Investments in a project that develops or operates special needs housing for disabled or elderly low- and moderate-income persons; and

(4) Investments in a project that qualifies for the Federal low-income housing tax credit;

(b) Economic development and job creation investments, including:

(1) Investments that finance small businesses (including equity or debt financing and investments in an entity that provides loan guarantees) that are located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments in an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a low- and moderate-income area and occupied primarily by small businesses, or that is occupied primarily by small businesses that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals; and

(3) Investments in low- and moderate-income areas that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(c) Investments in community development entities, including:

(1) Investments in a national bank that has been approved by the OCC as a national bank with a community development focus;

(2) Investments in a community development financial institution, as defined in 12 U.S.C. 4742(5);

(3) Investments in a community development entity that is eligible to receive New Markets tax credits under 26 U.S.C. 45D; and

(d) Other public welfare investments, including:

(1) Investments that provide credit counseling, job training, community development research, and similar technical assistance services for non-profit community development organizations, low- and moderate-income individuals or areas, or small businesses located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments of a type approved by the Federal Reserve Board under 12 CFR 208.22 for state member banks that are consistent with the requirements of § 24.3; and

(3) Investments of a type previously determined by the OCC to be permissible under this part.

Dated: December 23, 2002

John D. Hawke, Jr.
Comptroller of the Currency