

OCC 96-63

Subject: 12 CFR 24 CDC, CD Project,

Description: Final Rule

and other Public Welfare Investments

TO: Chief Executive Officers of National Banks, Deputy  
Comptrollers, Department and Division Heads, Examining  
Personnel, and Other Interested Parties

#### PURPOSE

The attached rule, issued by the Office of the Comptroller of the Currency (OCC), amends and replaces the former rule found at 12 CFR 24. Part 24 implements 12 USC 24 (Eleventh), which permits national banks to make investments designed primarily to promote the public welfare. The rule outlines the requirements for national bank community development corporation (CDC), community development project (CD Project) and other public welfare investments.

The rule implements three major changes that enhance the ability of national banks to make community development and other public welfare investments. The first change involves modifications to the former rule's public welfare requirements. The second change broadens self-certification, a process that allows a bank to make certain investments and within 10 days, certify to the OCC that the investments comply with Part 24. The third is a policy change that will allow a national bank, in certain instances, to choose whether to make an investment under Part 24 or under other authority provided by the National Bank Act. These three changes are described briefly, below.

**Public welfare investments.** Under the rule, a national bank may make a public welfare investment if it primarily benefits low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment by local, state, tribal, or federal government (including federal enterprise communities and federal empowerment zones). The rule provides a non-exhaustive list of activities that demonstrate how a bank can provide this benefit. The rule also modifies the former private market financing test and now requires the bank to demonstrate that it is not reasonably practicable to obtain other private market financing for the investment. In addition, under the public welfare criteria, a bank must still demonstrate community support for, or participation in, a proposed investment. The rule, however, now provides a non-exhaustive list of acceptable ways for a bank to involve community partners in its public welfare investments.

**Self-certification.** The rule allows banks to self-certify eligible investments that benefit low- and moderate-income individuals or areas. In addition, based on the OCC's success with the former rule's self-certification process since 1993, the rule broadens self-certification by:

Allowing a bank of any size to self-certify investments up  
to 5 percent of its unimpaired capital and surplus.

This replaces the former rule's tiered approach based on asset size and the former rule's \$10 million investment limit for large banks.

Allowing a bank to determine the appropriate structure for its Part 24 investment. This removes the former rule's list of investment structures that were eligible for self-certification.

Expanding the list of eligible activities for self-certification. The expanded list includes investments approved by the Federal Reserve Board and investments in a national bank with a community development focus.

Permitting a bank to self-certify a small portion of an eligible investment that targets areas outside its main office or branches. This allows banks to make investments that target both its market areas as well as surrounding areas.

Incorporating investments previously approved by the OCC as eligible activities for self-certification. This removes the former rule's separate process for previously approved investments.

The rule still allows a bank to make an investment not eligible for self-certification. However, prior to making the investment, the bank must send a letter to the OCC describing how the proposed investment meets Part 24 requirements. Unless notified otherwise by the OCC within 30 days, the bank may proceed with the investment.

Policy Change. In the past, the OCC has not used 12 USC 24 (Eleventh), as implemented by Part 24, to approve activities that are permissible under other provisions of the National Bank Act. Under the final rule, in certain instances, the OCC will allow a bank to choose whether to make an investment under Part 24 or under other authority.

The Federal Register published the revised Part 24 on September 23, 1996. It became effective on October 23, 1996.

#### ORIGINATING OFFICE

For further information, contact Karen Bellesi, acting deputy director, Community Development Division, (202) 874-4930, or Michele Meyer, senior attorney, Community Consumer Law Division, (202) 874-5750.

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Bert A. Otto  
Acting Deputy Comptroller  
for Compliance Management

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