



# RESCINDED

OCC 2006-44

**Subject: Public Welfare Investments**  
**Date: October 23, 2006**

**To: Chief Executive Officers and Compliance Officer of All National Banks, Department and Division Heads, and All Examining Personnel**

## **Description: Increase in Investment Limits**

OCC 2006-44 has been replaced by OCC 2008-11, 2008-22 and 2009-14.

investments under 12 USC 24 (Eleventh) [section 24 (Eleventh)].

### **Investment Limit**

The maximum aggregate public welfare investment limit for a national bank was raised from 10 to 15 percent of the bank's unimpaired capital and surplus. Generally, national banks may make public welfare investments up to 5 percent of the bank's capital and surplus without prior OCC approval. However, a national bank now may invest up to an additional 10 percent (15 percent total) if the OCC determines, by order, that additional investments will not pose a risk to the deposit insurance fund and that the investing national bank is not undercapitalized.

### **Test for Public Welfare Investments**

The act also revised the general public welfare investment authority in section 24 (Eleventh). Previously, section 24 (Eleventh) authorized 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 by providing housing, service, or jobs)." A national bank could "make such investments directly or by purchasing interests in an entity primarily engaged in making such investments."

The act revised this grant of authority to provide that national banks may "make investments, directly or indirectly, each of which promotes the public welfare by benefiting primarily low- and moderate-income communities or families (such as by providing housing, services, or jobs)." The act also clarified, among other things, that each investment made by a bank or its subsidiary under the authority granted by section 24 (Eleventh) must meet the new standards and limitations.

Although the standard for permissible public welfare investments has changed, most common public welfare investments benefiting low- and moderate-income communities and families, such as low-income housing tax credit projects, will continue to be authorized. Further, the change in the public welfare investment standard is prospective only. Thus, any public welfare investment or written commitment to make such an investment made under the standards in effect before the enactment date of the act will not be affected. National banks that made such investments or written commitments prior to October 13, 2006, will not be required to divest of such investments, and may fulfill any such commitments.

### **Regulatory Filings**

National banks should continue to complete a Form CD – 1 for any public welfare investment it makes. This form currently asks banks to describe whether the investment is one or more of the following types – investments that primarily benefit low- and moderate-income individuals, investments that primarily benefit low- and moderate-income areas, investments that primarily benefit areas targeted for redevelopment,

and investments that are "qualified investments" under the Community Reinvestment Act (CRA) rules. If an investment is one that benefits areas targeted for redevelopment or would be a "qualified investment" under the CRA, and the bank is uncertain whether it will also benefit primarily low- and moderate-income communities or families, the bank should contact the OCC's Community Affairs Department at (202) 874-5556 before making the investment in order to determine its eligibility under the new standards. The bank may also contact the Community Affairs Officer assigned to its institution or district with any questions about eligible investments.

The OCC will publish in the *Federal Register* a notice of proposed rulemaking conforming 12 CFR 24, including Form CD – 1, with the revised section 24 (Eleventh) in the near future.

If you have any questions about the statute or changes, please contact the Community Affairs Department at (202) 874-5556 or the Community and Consumer Law Division at (202) 874-5750.

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<sup>1</sup> Pub. L. No. 109-351 (2006).