

those in community development corporations (CDCs) and community development projects (CD Projects) that develop affordable housing, foster revitalization or stabilization of low- and moderate-income areas or other areas targeted for redevelopment by local, state, tribal or Federal government, or provide equity or debt financing for small businesses that are located in such areas or that produce or retain permanent jobs for low- and moderate-income persons. This part provides:

(1) The standards that the OCC uses to determine whether an investment is designed primarily to promote the public welfare; and

(2) The procedures that apply to these investments.

(c) *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 1557-0194.

#### §24.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Adequately capitalized* has the same meaning as adequately capitalized in 12 CFR 6.4.

(b) *Capital and surplus* means:

(1) A bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards set out in Appendix A to 12 CFR part 3 as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under Appendix A to 12 CFR part 3, as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161.

(c) *Community development corporation (CDC)* means a corporation established by one or more insured financial institutions, or by insured financial institutions and other investors, to make one or more investments that meet the requirements of §24.3.

(d) *Community development Project (CD Project)* means a project to make an investment that meets the requirements of §24.3.

(e) *Eligible bank* means, for purposes of §24.5, a national bank that:

(1) Is well capitalized;

(2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System;

(3) Has a Community Reinvestment Act (CRA) rating of "Outstanding" or "Satisfactory"; and

(4) Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive (*see* 12 CFR part 6, subpart B) or, if subject to any such order, agreement or directive, is informed in writing by the OCC that the bank may be treated as an "eligible bank" for purposes of this part.

(f) *Low-income and moderate-income* have the same meanings as "low-income" and "moderate-income" in 12 CFR 25.12(n).

(g) *Significant risk to the deposit insurance fund* means a substantial probability that any Federal deposit insurance fund could suffer a loss.

(h) *Small business* means a business, including a minority-owned small business, that meets the qualifications for Small Business Administration Development Company or Small Business Investment Company loan programs in 13 CFR 121.301.

(i) *Well capitalized* has the same meaning as well capitalized in 12 CFR 6.4.

#### §24.3 Public welfare investments.

A national bank may make an investment under this part if:

(a) The investment 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) by providing or supporting one or more of the following activities:

(1) Affordable housing, community services, or permanent jobs for low- and moderate-income individuals;

(2) Equity or debt financing for small businesses;

(3) Area revitalization or stabilization; or

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(4) Other activities, services, or facilities that primarily promote the public welfare;

(b) The bank demonstrates that it is not reasonably practicable to obtain other private market financing for the proposed investment;

(c) The bank demonstrates the extent to which the investment benefits communities otherwise served by the bank; and

(d) The bank demonstrates non-bank community support for or participation in the investment. Community support or participation may be demonstrated in a variety of ways, including but not limited to:

(1) In the case of an investment in a CD entity with a board of directors, representation on the board of directors by non-bank community representatives with expertise relevant to the proposed investment;

(2) Establishment of an advisory board for the bank's community development activities that includes non-bank community representatives with expertise relevant to the proposed investment;

(3) Formation of a formal business relationship with a community-based organization in connection with the proposed investment;

(4) Contractual agreements with community partners to provide services in connection with the proposed investment;

(5) Joint ventures with local small businesses in the proposed investment; and

(6) Financing for the proposed investment from the public sector or community development organizations.

### § 24.4 Investment limits.

(a) *Limit 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(s), 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.

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(b) *Limited liability.* A national bank may not make an investment under this part that would expose the bank to unlimited liability.

### § 24.5 Public welfare investment self-certification and prior approval procedures.

(a) *Self-certification of public welfare investments.* (1) Subject to § 24.4(a), an eligible bank may make an investment described in § 24.6(a) without prior notification to, or approval by, the OCC if the bank follows the self-certification procedures prescribed in this section.

(2) To self-certify an investment, an eligible bank shall submit, within 10 working days after it makes an investment, a letter of self-certification to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(3) The bank's letter of self-certification must include:

(i) The name of the CDC, CD Project, or other entity in which the bank has invested;

(ii) The date the investment was made;

(iii) The type of investment (equity or debt), the investment activity listed in § 24.6(a) that the investment 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 investments under this part, including commitments and the investment being self-certified;

(v) The percentage of the bank's capital and surplus represented by the bank's aggregate outstanding investments under this part, including commitments and the investment being self-certified;

(vi) A statement certifying compliance with the requirements of § 24.3 and § 24.4; and

(vii) If a portion of the investment funds projects outside of the areas in which the bank maintains its main office or branches, a statement certifying that no more than 25 percent of the investment funds projects in a state or metropolitan area other than the states or metropolitan areas in which the bank maintains its main office or branches.