

national banks to make these types of investments but also emphasizes that many kinds of investments can promote the public welfare.

Definitions (§ 24.2)

In keeping with the Regulation Review Program's goal of using terminology consistently throughout the OCC's regulations, the OCC is proposing definitions and terms common to other OCC regulations. For example, the definition of "low-income and moderate-income" now refers to the OCC's CRA Regulation. The definition of "capital and surplus" is the same as the definition of "capital and surplus" in the OCC's Lending Limit Regulation, 12 CFR Part 32. Twelve CFR 32.2 defines "capital and surplus" as a bank's Tier 1 and Tier 2 capital under the OCC's Minimum Capital Ratios in Appendix A to 12 CFR Part 3, plus 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 12 CFR Part 3.

The OCC continues to recognize CDCs and CD Projects as vehicles that national banks may use to make investments under this part. These terms are defined at proposed § 24.2. The proposal, however, omits the current regulation's definitions of community development limited partnership and community-based development corporation as unnecessary further examples of such vehicles. This change does not affect national banks' authority to invest in community development limited partnerships or community based development corporations. Consistent with the requirements of this part, national banks may continue to invest in these and other vehicles.

The proposal adds a definition of "eligible bank" that is the same as the "eligible bank" definition proposed by the OCC for corporate applications in its November 29, 1994 Notice of Proposed Rulemaking concerning 12 CFR Part 5 (59 FR 61034). The proposal provides that a bank may self-certify investments for purposes of part 24 if it has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System, has at least a satisfactory CRA rating, is well capitalized, and is not subject to any current OCC enforcement actions. As explained in proposed § 24.5(a)(4), a national bank that is at least adequately capitalized and that has a composite rating of at least 3 with improving trends may submit a letter to the OCC's Community Development Division requesting permission to self-certify investments. This is a change from the current rule, which allows an

adequately capitalized, 1 or 2 rated bank that is not subject to a current OCC enforcement action to self-certify investments. The OCC believes this modification avoids the potential confusion of two different "eligible bank" definitions in different sections of the OCC's rules, and is appropriate in light of the proposal's significantly expanded self-certification opportunities for banks (See proposed § 24.6.)

In addition, the proposal changes the definition of "significant risk to the deposit insurance fund" to include risk to all federal deposit insurance funds.

Finally, the proposal makes two changes concerning the small business definitions in current part 24. First, the proposal removes the definition of "minority-owned small businesses" because these businesses are encompassed by the regulation's provisions concerning all small businesses. Second, the proposal updates the citation to the Small Business Administration regulations referenced in the definition of "small business" in the current regulation.

Public Welfare Investments (§ 24.3)

Part 24 currently delineates a public welfare test that consists of four requirements. Under current § 24.4, an investment in a CDC or CD Project is designed primarily to promote the public welfare only if: (1) the investment primarily benefits low- and moderate-income persons and families or small businesses; (2) the investment addresses community development needs not met by the private market in one or more communities served by the bank; (3) there is nonbank community involvement in the CDC or CD Project; and (4) the profits and distributions from a CDC or CD Project are reinvested in activities that primarily promote the public welfare.¹

Based on its experience since it adopted part 24, the OCC believes that the existing public welfare test should be modified to reflect a more diverse standard for whether an investment promotes the public welfare. Therefore, proposed § 24.3(a) retains the first element of the public welfare test, benefit to low- and moderate-income individuals and small businesses, but makes clear that this benefit can be provided in a variety of ways. Section 24.3(a) sets forth a non-exhaustive list of permissible investment activities that

provide the required benefit. The list incorporates the definition of "community development" provided in the CRA regulation, and reflects the factors for determining whether an institution qualifies as a Community Development Financial Institution under the Riegle Community Development and Regulatory Improvement Act and the OCC Community Development Division's experience with recent innovative investment proposals.

Proposed § 24.3(b) clarifies that, under the second element of the current public welfare test, a bank is not required to demonstrate that it is impossible to obtain private market financing. A bank must demonstrate, however, the reasons that it is difficult to secure such financing for its proposed investment. Proposed § 24.3(d) permits a bank to make an investment that also benefits an area outside those where the bank provides its core banking services. The bank must still demonstrate, however, the extent to which its investment benefits the communities where it provides these services.

The proposal also modifies the existing community participation requirement of the public welfare test. Current § 24.4(a)(3) requires a bank to demonstrate nonbank community involvement in a CDC or CD project by indicating support from the affected primary beneficiaries and representatives of local government. In the case of a CDC, a bank must demonstrate such support by the composition of the organization's board of directors.

The OCC believes that community involvement is vital to the success of banks' part 24 investment programs. Therefore, the proposal modifies the community participation requirement to allow banks and community groups to determine how best to structure community partnerships under part 24. Proposed § 24.3(c) requires that a bank demonstrate community support for or participation in an investment proposal. A bank could demonstrate such community support or participation in a variety of ways including non-bank community representation on a CDC board of directors, establishment of a community advisory board for the bank's community development activities, formation of a formal business relationship with a community-based organization, public sector or community group financing, or letters of support from community representatives. The OCC requests comment on the appropriate means of demonstrating community support for or participation in a bank's part 24

¹ On October 26, 1995, the OCC published a proposal to eliminate part 24's reinvestment requirement. 60 FR 54819. The public comment period on that proposal ended on November 27, 1995. The final rule is published elsewhere in this issue of the Federal Register.