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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 24

[Docket No. 95-33]

RIN 1557-AB46

Community Development Corporation and Project Investments

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its Community Development Corporation and Project Investments regulation. This final rule removes a provision that requires a bank to reinvest profits, dividends, and other distributions from community development investments in activities that promote the public welfare. The purpose of the final rule is to encourage public welfare investments by national banks.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Karen Bellesi, Program Coordinator, Community Development Investments, Community Development Division, 202/874-4930; Michele Meyer, Attorney, Community and Consumer Law Division, 202/874-5750; or Karen McSweeney, Attorney, Legislative and Regulatory Activities Division, 202/874-5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Introduction

The OCC is currently reviewing 12 CFR part 24 as a component of its Regulation Review Program. As part of this review, on October 26, 1995 (60 FR 54819), the OCC published a notice of proposed rulemaking (NPRM) to remove

one provision from part 24. Another NPRM proposing more comprehensive changes to other part 24 provisions is published elsewhere in this issue of the Federal Register.

Part 24 permits public welfare investments by national banks, subject to certain limitations. Currently, part 24 requires a bank to reinvest the profits, dividends, and other distributions from its equity and debt investments in a community development corporation (CDC) or community development (CD) project in activities that primarily promote the public welfare. This final rule removes the reinvestment requirement from part 24.

Background

Under 12 U.S.C. 24 (Eleventh) (section 24 (Eleventh)), a national bank is authorized to make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities (such as through the provision of housing, services, or jobs) consistent with safe and sound banking practices.¹ The OCC issued part 24 on December 27, 1993 (58 FR 68464), to establish various requirements for these permissible public welfare investments.

The part 24 requirements include a provision, currently codified at 12 CFR 24.4(a)(4), that prescribes how a bank may use certain proceeds from its section 24 (Eleventh) investments. This provision requires that a national bank devote the profits, dividends, tax credits, and other distributions from equity investments, or interest income from debt investments received by a bank from a CDC or CD project investment, to activities that primarily promote the public welfare as determined by the OCC. Further, in the case of an investment in a for-profit CDC subsidiary, a national bank must reinvest the profits, dividends, and other distributions in the CDC during its first three years of operation.

Section 24 (Eleventh) does not require reinvestment of public welfare investment proceeds. The OCC included this provision in part 24 based on its practice in implementing 12 U.S.C. 24 (Eighth) (section 24 (Eighth)), which was enacted prior to section 24

(Eleventh). Section 24 (Eighth) generally allows a national bank to contribute to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to the public welfare. Interpretive Ruling 7.7480, which implemented section 24 (Eighth),² permitted a bank to make investments, as long as the investments were of a predominantly civic, community, or public nature. At that time, the OCC concluded that it could be inconsistent with the underlying charitable purpose of section 24 (Eighth) for a bank to retain profits on these investments. Interpretive Ruling 7.7480 was, therefore, interpreted to require a bank to reinvest profits, dividends, and other distributions in public purpose activities.

Although part 24 was drafted under the authority of section 24 (Eleventh), which provides direct authority for public welfare investments, it included a reinvestment requirement as a means of furthering the public welfare nature of investments made pursuant to this authority.

Description of the Proposal and Comments Received

In its October 26, 1995, NPRM, the OCC proposed to remove the current part 24 reinvestment requirement. The statute does not restrict an institution from earning and retaining profits on investments made pursuant to section 24 (Eleventh), as long as the investments are designed primarily to promote the public welfare. In addition, reaction to the current rule indicates that in some instances the reinvestment provision has discouraged banks from making part 24 investments. For example, the requirement that a bank reinvest low-income housing tax credits in restricted activities has diminished the economic incentive for a bank to participate in this type of low-income housing project.

The OCC received 13 comments on its proposed removal of the reinvestment requirement. Twelve of the commenters supported the proposal. The majority of these commenters either indicated that the proposal would provide an incentive for a national bank to make part 24 investments or indicated that the proposal would eliminate a disincentive

¹ Paragraph Eleventh was added to 12 U.S.C. 24 by the Depository Institutions Disaster Relief Act of 1992, enacted on October 23, 1992. Pub. L. 102-485, Section 6(a), 106 Stat. 2774 (1992).

² Interpretive Ruling 7.7480, which was codified at 12 CFR 7.7480, was removed in 1993 when 12 CFR part 24 was promulgated.

that currently results from the reinvestment provision.

Several commenters also predicted that the change would not have a negative effect on national banks' safety and soundness. One commenter suggested that the proposed rule might promote safety and soundness by allowing bank management increased flexibility in its use of part 24 investment proceeds.

Several commenters indicated that the proposed change would decrease the cost or burden associated with part 24 compliance. These comments generally were made with regard to low-income housing tax credits for which determining compliance with the reinvestment provision may be cumbersome. One commenter noted that the reinvestment requirement furthers the misperception that public welfare investments are adverse to bank profitability.

One commenter opposed the proposal based on a concern that it might result in fewer part 24 investments. This commenter suggested that the OCC monitor the level of national bank public welfare investments on an ongoing basis to assess whether the change made by this final rule yields the anticipated results.

Discussion of the Final Rule

In this final rule, the OCC adopts the proposal and removes the reinvestment requirement from part 24. The OCC believes that removal of the reinvestment provision will further the basic objective of section 24 (Eleventh) by encouraging banks to make more investments. The OCC also believes that the change made by this final rule is consistent with bank safety and soundness. It will enable a bank to use profits, dividends, and other distributions from its part 24 investments for any purpose based upon an overall assessment by the bank's management of its financial needs and public welfare investment objectives.

Removing the reinvestment requirement will encourage banks to make investments that promote the public welfare. It will not, however, constrain a bank's use of investment proceeds nor hamper its ability to ensure the sound operation of the bank as a whole.

The OCC will continue to monitor public welfare investment levels and trends, as it has since public welfare investments were specifically authorized by part 24. Based on this monitoring, the OCC periodically will evaluate the effectiveness of part 24, as amended.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The final rule will reduce somewhat the regulatory burden on national banks, regardless of size, by removing the requirement that a national bank must reinvest the proceeds of its public welfare investments.

Executive Order 12866

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

Unfunded Mandates

The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

Effective Date

This final rule will become effective on January 1, 1996. The final rule will apply to profits from both existing and new public welfare investments. Thus, public welfare investment profits, dividends, tax credits, interest, and other distributions that a national bank earns prior to January 1, 1996, but which the bank has not reinvested by January 1, 1996, do not have to be reinvested. In addition, public welfare profits, dividends, tax credits, interest, and other distributions that a national bank earns after January 1, 1996, which stem from a public welfare investment undertaken by the national bank prior to January 1, 1996, will not have to be reinvested. Finally, profits, dividends, tax credits, interest, and other distributions from a public welfare investment undertaken after January 1, 1996, will not be subject to the reinvestment requirement.

The Administrative Procedure Act (5 U.S.C. 553(d)(1)) (APA) states that a substantive rule shall not be published less than 30 days before its effective date unless the rule grants or recognizes an exemption or relieves a restriction. Because the current regulation restricts the manner in which a national bank can use its public welfare investment returns and the final rule removes this restriction, this final rule satisfies the terms of the APA's exception to the requirement for a delayed effective date.

In addition, section 302 of the Riegle Community Development and

Regulatory Improvement Act of 1994 generally restricts the effective date of Federal banking agency regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions. The OCC believes that section 302 is not applicable to this final rule because the final rule does not impose any additional reporting, disclosure, or other new requirements on national banks. Instead, this final rule removes the current reinvestment requirement.

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, part 24 of title 12, chapter I, of the Code of Federal Regulations is amended as set forth below:

PART 24—COMMUNITY DEVELOPMENT CORPORATION AND PROJECT INVESTMENTS

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

Authority: 12 U.S.C. 24 (Eleventh), 93a, 161, 481 and 1818.

§ 24.4 [Amended]

2. Paragraph (a)(2) of § 24.4 is amended by adding at the end of the paragraph "and".

3. Paragraph (a)(3) of § 24.4 is amended by removing "; and" at the end of the paragraph and adding a period.

4. Paragraph (a)(4) of § 24.4 is removed.

Dated: December 15, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95-31020 Filed 12-27-95; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R-0896]

International Operations of United States Banking Organizations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This final rule amends Subpart A of Regulation K (International Operations of U.S. Banking Organizations) to provide expanded general consent authority for investments in foreign companies by