

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 24

[Docket No. 95-35]

RIN 1557-AB46

#### Community Development Corporation and Project Investments and Other Public Welfare Investments

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is proposing to revise its regulation governing national bank investments designed primarily to promote the public welfare. The revisions clarify banks' authority under this part; renumber and reorganize the regulation; provide the OCC greater flexibility for determining whether investments primarily promote the public welfare; and simplify the regulation's investment self-certification and prior approval processes. The proposed revisions reduce regulatory burden and inconsistencies while enhancing the ability of national banks to make public welfare investments.

**DATES:** Comments must be received on or before February 26, 1996.

**ADDRESSES:** Interested persons are invited to submit comments to Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219. Attention: Docket No. 95-35. Comments will be available for inspection and photocopying at that address. In addition, comments may be sent by facsimile to (202) 874-5274, or by electronic mail to [reg.comments@occ.treas.gov](mailto:reg.comments@occ.treas.gov).

**FOR FURTHER INFORMATION CONTACT:** Karen Bellesi, Program Coordinator, Community Development Investments, Community Development Division, (202) 874-4930; or Michele Meyer,

Attorney, Community and Consumer Law Division, (202) 874-5750.

#### SUPPLEMENTARY INFORMATION:

##### Background

As part of its Regulation Review Program, the OCC is proposing revisions to 12 CFR Part 24. In December of 1993, the OCC adopted part 24 to implement the recently-enacted 12 U.S.C. 24(Eleventh). Section 24(Eleventh) authorizes national banks 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)," subject to certain percentage of capital limitations.

As currently written, part 24 reflects the statute's broad policy of promoting the public welfare and places particular emphasis on community development investments. Part 24 permits national banks to make investments in community development corporations (CDCs) and community development projects (CD Projects), consistent with safe and sound banking practices. Under part 24, banks may self-certify certain community development investments. Investments that do not qualify for self-certification are subject to one of two prior approval processes. The first requires that a bank file an investment proposal, which the OCC usually approves or disapproves within 30 days. The second consists of a five-day review period for investment proposals that the OCC has previously approved for another bank.

Part 24 was crafted carefully initially to permit the agency and the industry to gain experience with the new investment authority provided by the statute. The proposed revisions reflect the OCC's and the industry's successful experience with part 24. In the two years since the OCC adopted part 24, national banks and their community partners have invested millions of dollars in hundreds of CDCs and CD Projects. Based on this success, and the OCC's desire to facilitate increased community development lending and investment, the OCC believes that it can ease some restrictions and reduce the regulatory burden associated with part 24.

The proposed revisions preserve part 24's community development focus but provide greater flexibility for

determining whether investments promote the public welfare. To encourage innovation in banks' public welfare investments, the proposal modifies the current test for determining whether an investment is designed primarily to promote the public welfare (public welfare test). In addition, the proposal simplifies part 24's self-certification and prior approval processes. The proposed revisions simplify the rule and enhance its clarity by using terms common to other recently adopted or revised regulations, such as the Federal Reserve Board's Community Development and Public Welfare Investments Regulation, 12 CFR Part 208.21, and the OCC's Community Reinvestment Act Regulation (CRA Regulation), 12 CFR Part 25. In addition, the proposal reorganizes part 24 and renumbers its provisions. A derivation table showing these changes appears at the end of this preamble.

#### Description of the Proposal

The following discussion identifies and explains the significant proposed changes to the regulation. The OCC requests comment on all aspects of the proposed regulation, as well as specific comment on the changes discussed in this preamble.

#### Title

The proposal reflects the OCC's view that national banks can promote the public welfare through a variety of authorized investments, including CDCs and CD Projects that develop affordable housing, foster revitalization and stabilization of low-and moderate-income areas, or provide equity or debt financing for small businesses. Thus, the OCC proposes to change the title of part 24 from "Community Development Corporation and Project Investments" to "Community Development Corporation and Project Investments and Other Public Welfare Investments."

#### Authority, Purpose, and OMB Control Number (§ 24.1)

The proposal amends the "purpose" paragraph to reflect that CDCs and CD Projects that develop affordable housing, foster revitalization and stabilization of low-and moderate-income areas, or provide equity or debt financing for small businesses are just some of the types of investments that a national bank can make under part 24. The OCC continues to encourage

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.<sup>1</sup>

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

<sup>1</sup> 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.

investment and whether the final rule should specify some or all of them.

The proposal removes as unnecessary current § 24.4(e), which provides that a bank must manage its CDC and CD Project investments in a prudent manner. National banks must, of course, continue to manage their part 24 investments prudently.

#### *Investment Limits (§ 24.4)*

The current regulation contains investment limit provisions at current § 24.4(b) and (d). For ease of reference, the proposal groups the provisions concerning part 24 investment limits into a separately titled section. Proposed § 24.4(a) has been modified to clarify that, as provided in 12 U.S.C. 24(Eleventh), a bank's aggregate outstanding investments under part 24 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 a proposed investment, that a higher amount will pose no significant risk to the deposit insurance fund.

#### *Public Welfare Investment Self-Certification and Prior Approval Procedures (§ 24.5)*

Proposed § 24.5 simplifies, clarifies, and reduces the burden associated with the self-certification and prior approval procedures set forth in current § 24.11. Section 24.11 now provides three processes for approval of authorized investments. The first requires that a bank file an investment proposal, which the OCC usually approves or disapproves within 30 days. The second process consists of a five-day review period by the OCC for investment proposals that the OCC has previously approved for another bank. The third is a self-certification process for certain investments, under which a bank files a notice with the OCC within 10 days after it makes an investment, and the OCC sends a confirmation of receipt within five days.

The proposal eliminates the second approval process and streamlines the third. Under proposed § 24.5(a) and § 24.6(a), a bank may self-certify an investment previously approved by the OCC for another bank. Although not specified in the proposed rule, the OCC will continue its practice of sending a simple confirmation of receipt of a bank's self-certification notice within five days. Under the proposal, however, the OCC will not retroactively review a self-certified investment proposal. Instead, the OCC will review the self-certification documents simply to ensure that they meet the self-

certification requirements set forth in proposed § 24.5(a).

The prior approval procedures for investment proposals that do not qualify for self-certification are set forth in proposed § 24.5(b).<sup>2</sup> In considering a bank's investment proposal, the OCC will consider whether the investment satisfies the requirements of § 24.3 and whether it is consistent with the bank's safe and sound operation and the OCC's policies.

Although not specified in the proposal, the OCC will continue its practice of sending a simple confirmation of receipt of an investment proposal within five days. Unless otherwise notified by the OCC, a bank may make a proposed investment 30 calendar days after the date on which the OCC receives the bank's investment proposal. The OCC may notify the bank that it is extending the review period. If so notified, the bank may make the investment only with the OCC's written approval.

Current § 24.11(b) contains a limit on the size of investments eligible for self-certification by banks with more than \$250 million in assets. These banks must seek prior OCC approval for investments that exceed the lesser of 2 percent of their unimpaired capital and surplus or \$10 million. The OCC proposes to remove this limitation in light of the proposed new standards that define the banks eligible to use the self-certification process.

#### *Investments Eligible for Self-Certification (§ 24.6)*

Proposed § 24.6 replaces the current § 24.13, which limits self-certification to investments using certain structures as well as certain activities. These structures include multi-bank CDCs; CDCs established by state or local government; community-based organizations; and certain community development limited partnerships. A CDC subsidiary is not currently an eligible structure for self-certification.

The OCC believes that a structure-based self-certification limitation is no longer necessary. This limitation was intended to allow the OCC to ensure that particular investments did not expose banks to safety and soundness risks or unlimited liability. However, by limiting self-certification to eligible banks (as defined in proposed § 24.2(e)), the OCC believes it can reasonably rely on bank management to determine the

appropriate structures for part 24 investments.

In addition to eliminating the list of eligible structures, proposed § 24.6(a) expands the list of activities eligible for self-certification to reflect the industry's increasing innovation in making part 24 investments and the OCC's experience with self-certification under part 24. Part 24's self-certification provisions encourage public welfare investments by banks by reducing the regulatory steps associated with making the investments. In order to maximize the use of self-certification as an incentive for banks to make investments that primarily promote the public welfare, and to encourage banks' creativity in making these investments, the OCC has identified in proposed § 24.6(a) a clear and expanded list of eligible activities. This list includes, but is not limited to, certain investments that benefit low- and moderate-income persons and small businesses, investments that have been determined by the OCC to be permissible under part 24, and investments previously approved by the Federal Reserve Board under 12 CFR 208.21 for state member banks.

Notwithstanding the eligible activities listed in § 24.6(a), proposed § 24.6(b) provides that a bank may not self-certify investments that involve properties carried on the bank's books as "other real estate owned" (OREO properties) or that fund projects outside the states or metropolitan areas in which the bank's main office or branches are located. The latter limitation is similar to the limit on self-certification that appears in current part 24 but is revised to reflect that some national banks now have branches in more than one state.

#### *Examination, Records, and Remedial Action (§ 24.7)*

Proposed § 24.7 replaces current § 24.21 but makes no substantive change.

#### *Accounting for Public Welfare Investments (Current § 24.4(c))*

Current § 24.4(c) provides that a bank's investments in CDCs and CD Projects generally may be recorded as "other assets at cost." The rule also sets forth circumstances under which a bank would be required to consolidate its investments on a line-by-line basis or account for them under the equity method of accounting. The proposal eliminates this section as unnecessary, because banks generally look to other sources for their accounting instructions. Banks should record their investments, as appropriate, pursuant to the instructions for Consolidated Reports of Condition and Income

<sup>2</sup>The proposal removes the current rule's provision for optional review as unnecessary. A national bank may continue to request prior OCC review and approval of any investment proposal, including one that qualifies for self-certification.

published by the Federal Financial Institutions Examination Council.

**Policy Issue**

Currently, the OCC does not generally use 12 U.S.C. 24(Eleventh), as implemented by part 24, as an alternative basis for approving activities that are otherwise permissible under other provisions of the National Bank

Act, 12 U.S.C. 1, *et seq.* This is a policy position intended to prevent banks' activities from being subjected unnecessarily to part 24's capital limitation.<sup>3</sup> This position, however, does not reflect the OCC's general approach of allowing banks to decide how best to structure their investments.

The OCC requests comment on whether it should continue its policy of

not using part 24 as a basis for approving activities otherwise permissible under the National Bank Act.

**Derivation Table**

This table directs readers to the provision(s) of the current regulation, if any, upon which the proposed provision is based.

Revised provision	Original provision	Comments
§ 24.1 .....	§ 24.1 .....	Modified.
§ 24.2(a) .....	§ 24.2(a) .....	Modified.
(b) .....	§ 24.2(m) .....	Substantial change.
(c) .....	§ 24.2(b) .....	Modified.
(d) .....	§ 24.2(e) .....	Modified.
(e) .....	.....	Added.
(f) .....	§ 24.2(g), (h) .....	Substantial change.
(g) .....	§ 24.2(k) .....	Modified.
(h) .....	§ 24.2(l) .....	Modified.
	§ 24.2(c) .....	Removed.
	§ 24.2(d) .....	Removed.
	§ 24.2(f) .....	Removed.
	§ 24.2(i) .....	Removed.
(i) .....	§ 24.2(a) .....	Modified.
	§ 24.2(j) .....	Removed.
§ 24.3 .....	§ 24.4(a) .....	Substantial change.
§ 24.4 .....	§ 24.4(b), (d) .....	Modified.
	§ 24.4(c) .....	Removed.
	§ 24.4(e) .....	Removed.
§ 24.5(a) .....	§ 24.11(a) .....	Substantial change.
(b) .....	§ 24.11(b), (d), (e) .....	Substantial change.
	§ 24.11(c) .....	Removed.
§ 24.6(a) .....	§ 24.13(b) .....	Substantial change.
(b) .....	§ 24.11(b) .....	Modified.
	§ 24.13(a) .....	Removed.
§ 24.7 .....	§ 24.21 .....	Modified.

**Regulatory Flexibility Act**

It is hereby certified that this notice of proposed rulemaking, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This notice of proposed rulemaking, if adopted as a final rule, will reduce the regulatory burden on national banks, regardless of size, by replacing part 24's public welfare test with a non-exhaustive list of permissible public welfare investment activities, streamlining the self-certification and prior approval sections of the rule, and eliminating unnecessary provisions. While beneficial, these changes will not have a material impact on affected banks.

**Executive Order 12866**

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

**Unfunded Mandates**

The OCC has determined that this proposal 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.

**Paperwork Reduction Act of 1995**

The OCC invites comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for

the proper performance of its functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management

<sup>3</sup> For example, a bank could make an affordable housing loan under both 12 U.S.C. 24(Seventh) and 24(Eleventh). If the bank made such a loan under

the authority of 12 U.S.C. 24(Eleventh), the loan would be subject to a capital limitation that is stricter than the generally applicable lending limits.

and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557), Washington, DC 20503, with a copy to the Legislation and Regulatory Activities Division (1557), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

The collection of information requirements in this proposed rule are found in 12 CFR 24.5. This information is required for the public welfare investment self-certification and prior approval procedures. The likely respondents are national banks.

*Estimated average annual burden hours per respondent:* 1.05 hours.

*Estimated number of respondents:* 400.

*Estimated total annual reporting burden:* 418 hours.

*Start-up costs to respondents:* None.

#### 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, the OCC proposes to revise part 24, title 12, chapter I, of the Code of Federal Regulations to read as follows:

### **PART 24—COMMUNITY DEVELOPMENT CORPORATIONS, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS**

Sec.

- 24.1 Authority, purpose, and OMB control number.
- 24.2 Definitions.
- 24.3 Public welfare investments.
- 24.4 Investment limits.
- 24.5 Public welfare investment self-certification and prior approval procedures.
- 24.6 Activities eligible for self-certification.
- 24.7 Examination, records, and remedial action.

Authority: 12 U.S.C. 24 (Eleventh) and 93a.

#### **§ 24.1 Authority, purpose, and OMB control number.**

(a) *Authority.* The Office of the Comptroller of the Currency (OCC) issues this part pursuant to its authority under 12 U.S.C. 24(Eleventh) 93a, and 481.

(b) *Purpose.* This part implements 12 U.S.C. 24(Eleventh), which authorizes 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, services, or jobs. It is the OCC's policy to encourage national banks to make investments described in § 24.3, consistent with safety and soundness. The OCC believes that national banks can promote the public welfare through a variety of investments, including 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 provide equity or debt financing for small businesses. 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 under the OCC's Minimum Capital Ratios in Appendix A to 12 CFR Part 3; 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 12 CFR part 3.

(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 a national bank that:

(1) Is well capitalized;

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

(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 that meets the qualifications for Small Business Administration loan programs in 13 CFR 121.802 (a)(1) through (3).

(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 or small businesses 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 special debt financing for small businesses;

(3) Revitalization or stabilization of low- or moderate-income areas or other areas (including rural areas) targeted for redevelopment by local, state, or federal government; or

(4) Other activities, services, or facilities conducive to the public welfare;

(b) The bank sets forth the reasons why it is difficult to secure private market financing for the proposed investment;

(c) The bank demonstrates non-bank community support for or participation in the investment; and

(d) The bank demonstrates the extent to which the investment benefits communities otherwise served by the bank.

#### **§ 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.

(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 an investment is made, 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 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; and

(vi) A statement demonstrating compliance with § 24.3 and § 24.4.

(4) A national bank that is not an eligible bank but is at least adequately capitalized, and has a composite rating of at least 3 with improving trends under the Uniform Financial Institutions Rating System, may submit a letter to the Community Development Division requesting authority to self-certify investments. The Community Development Division considers these requests on a case-by-case basis.

(b) *Investments requiring prior approval.* (1) If a national bank or its proposed investment does not meet the requirements for self-certification set forth in paragraph (a) of this section, the bank shall submit a proposal for an investment to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) The bank's investment proposal must include:

(i) The name of the CDC, CD Project, or other entity in which the bank intends to invest;

(ii) The date on which the bank intends to make the investment;

(iii) The type of investment (equity or debt), the investment activity listed in § 24.3(a) that the investment supports, and a description of the particular investment;

(iv) 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 proposed);

(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 proposed); and

(vi) A statement demonstrating compliance with § 24.3 and § 24.4.

(3) In reviewing a proposal, the OCC considers the following factors and other available information including:

(i) Whether the investment satisfies the requirements of § 24.3;

(ii) Whether the investment is consistent with the safe and sound operation of the bank; and

(iii) Whether the investment is consistent with the requirements of this part and the OCC's policies.

(4) Unless otherwise notified by the OCC, and subject to § 24.4(a), the bank may make the proposed investment after 30 calendar days from the date on which the OCC receives the bank's investment proposal.

(5) The OCC, by notifying the bank, may extend its period for reviewing the investment proposal. If so notified, the bank may make the investment only with the OCC's written approval.

(6) The OCC may impose one or more conditions in connection with its approval of an investment under this part. All approvals are subject to the condition that a national bank must conduct the approved activity in a manner consistent with any published guidance issued by the OCC regarding the activity.

**§ 24.6 Activities eligible for self-certification.**

(a) *Eligible activities.* In accordance with the process described in § 24.5(a), a bank may self-certify the following investments without prior notice to, or approval by, the OCC:

(1) Investments in an entity that finances, acquires, develops, rehabilitates, manages, sells, or rents housing primarily for low- and moderate-income persons;

(2) Investments that stimulate economic development, community

stabilization or revitalization, or permanent job creation or retention for low- and moderate-income persons by financing small businesses (including equity or debt financing and investments in an entity that provides loan guarantees);

(3) Investments that stimulate economic development, community stabilization or revitalization, or permanent job-creation or retention for low- and moderate-income persons by providing credit counseling, job training, community development research, and similar technical assistance services for small businesses, non-profit community development organizations, low- and moderate-income persons or areas, or other areas (including rural areas) targeted for redevelopment by state or local government;

(4) Investments in an entity that stimulates economic development, community stabilization or revitalization, or permanent job creation or retention for low- and moderate-income persons by acquiring, developing, rehabilitating, managing, selling, or renting commercial or industrial property that is located in a low- and moderate- income area or other area (including rural areas) targeted for redevelopment by state or local government, and which is occupied primarily by small businesses;

(5) Investments as a limited partner in a project with a general partner that is, or is primarily owned and operated by, a 26 U.S.C. 501(c)(3) or (4) non-profit corporation and that qualifies for the federal low-income housing tax credit;

(6) Investments in low- or moderate-income areas, or other areas (including rural areas) targeted for redevelopment by state or local government that create long term employment opportunities, the majority of which will be held by low- and moderate-income persons;

(7) Investments in a national bank that has been approved by the OCC as a national bank with a community development focus;

(8) Investments that have been approved by the Federal Reserve Board under 12 CFR 208.21 for state member banks; and

(9) Investments that have been previously determined by the OCC to be permissible under this part.

(b) *Ineligible activities.* Notwithstanding the provisions of this section, a bank may not self-certify an investment if:

(1) The investment involves properties carried on the bank's book as "other real estate owned";

(2) 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; or

(3) The OCC determines, in published guidance, that the investment is inappropriate for self-certification.

**§ 24.7 Examination, records, and remedial action.**

(a) *Examination.* National bank investments under this part are subject to the examination provisions of 12 U.S.C. 481.

(b) *Records.* Each national bank shall maintain in its files information adequate to demonstrate that it is in compliance with the requirements of this part.

(c) *Remedial action.* If the OCC finds that an investment under this part is in violation of law or regulation, is inconsistent with the safe and sound operation of the bank, or poses a significant risk to a federal deposit insurance fund, the national bank shall take appropriate remedial action as determined by the OCC.

Dated: December 14, 1995.

Eugene A. Ludwig,

*Comptroller of the Currency.*

[FR Doc. 95-31021 Filed 12-27-95; 8:45 am]

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**FEDERAL RESERVE SYSTEM**

**12 CFR Part 202**

[Regulation B; Docket No. R-0910]

**Equal Credit Opportunity**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule; official staff interpretation.

**SUMMARY:** The Board is publishing for comment proposed revisions to its official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and substitutes for individual staff interpretations. The proposed revisions to the commentary provide guidance on issues that the Board has been asked to clarify, including credit scoring and spousal signature rules.

**DATES:** Comments must be received on or before February 28, 1996.

**ADDRESSES:** Comments should refer to Docket No. R-0910, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B-2222 of the Eccles Building

between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

**FOR FURTHER INFORMATION CONTACT:** Jane Jensen Gell, Sheilah A. Goodman, or Natalie E. Taylor, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412. For users of the Telecommunications Device for the Deaf, contact Dorothea Thompson at (202) 452-3544.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR Part 202). The Board also has an official staff commentary (12 CFR Part 202 (Supp. I)) that interprets the regulation. The commentary provides general guidance to creditors in applying Regulation B to various credit transactions, and is updated periodically to address significant questions that arise.

**II. Explanation of Proposed Commentary**

*Section 202.2—Definitions*

**2(p) Empirically Derived and Other Credit Scoring Systems**

Comment 2(p)-2 would be revised to provide guidance on revalidation requirements for credit scoring systems.

*Section 202.5—Rules Concerning Taking of Applications*

**5(e) Written Applications**

Comment 5(e)-3 would be revised to cross-reference the proposed comments to section 202.13(b), which address applications submitted through an electronic medium.

*Section 202.6—Rules Concerning Evaluation of Applications*

**6(b) Specific Rules Concerning Use of Information**

**6(b)(2)**

Comment 6(b)(2)-2 would be revised to address the use of age in credit scoring systems that use scorecards for different age groups based on characteristics that are predictive for each group. Each scorecard considers the correlation among the predictive variables (representing characteristics such as income, length of residence, and credit history) for the age group. Each predictive variable is assigned the appropriate weight given the impact of the other predictive variables in that age group, so that comparable scores for each group reflect the same level of risk.

Under the ECOA and Regulation B, if a creditor considers age—whether by directly assigning a value to age or by some other means such as establishing scorecards for different age groups—the age of an elderly applicant must not be assigned a negative value. The Board believes that, to ensure that the treatment accorded applicants age 62 or older complies with the law, elderly applicants who do not qualify for credit under the factors assigned to the scorecard for their age group must be rescored under the factors assigned to the scorecards for all other age groups in the system. Comment 6(b)(2)-2 would be revised to incorporate this concept.

Proposed comment 6(b)(2)-4 addresses the use of age in a reverse mortgage transaction. A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and the repayment of these amounts does not become due until the borrower dies, moves permanently from the home, or transfers title to the home. The proposed comment clarifies that using age, as a proxy for life expectancy, in a reverse mortgage transaction to determine the line of credit or monthly payment amount that a borrower will receive does not violate the regulation.

**6(b)(6)**

Comment 6(b)(6)-1 would be revised to clarify that if a creditor considers credit history, it must consider information presented by the applicant that is not included in the credit report, if it is the type the creditor normally considers on a credit report. The comment also clarifies that when one spouse is applying for individual credit, the creditor must consider information presented by the applicant that would