

to, or approval by, the OCC by submitting a self-certification letter to the OCC within 10 working days after it makes the investment. For all other investments under part 24, a national bank must apply to the OCC for prior approval of an investment proposal. Unless otherwise notified in writing by the OCC, the proposed investment is deemed approved 30 calendar days from the date on which the OCC receives the proposal application.<sup>11</sup>

To emphasize that eligible national banks are not required to seek prior approval of public welfare investments that meet the requirements of §§ 24.3 and 24.4, the proposal changes the title of § 24.5 to "Public welfare investment after-the-fact notice and prior approval procedures," and references in the section to "self-certification" are changed to "after-the-fact notice." The OCC further proposes to simplify the part 24 investment notification processes and make them more consistent with the notification processes established under 12 CFR part 5 for certain equity investments.

Currently, § 24.5(a) requires that a bank's self-certification letter 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 § 24.3(a) that the investment primarily 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 part 24 investments, including the investment being self-certified; (v) the percentage of the bank's capital and surplus represented by the bank's aggregate outstanding part 24 investments, including the investment being self-certified; and (vi) a statement certifying compliance with the requirements of § 24.3 and § 24.4. In this respect, part 24 currently calls for significantly more detail than the procedures prescribed by part 5 that apply where a national bank makes other types of permissible equity investments. Under part 5, a national bank's written after-the-fact notice of certain equity investments must set forth simply "a description, and the amount, of the bank's investment."<sup>12</sup>

The proposal revises § 24.5 to make it more consistent with the part 5 equity investment notification procedures and to remove unnecessary administrative impediments to national bank public welfare investments. The proposal

removes the first three elements currently required in a bank's self-certification letter (set forth at current § 24.5(a)(3)(i)–(iii)) to give a bank the flexibility to determine how best to describe a particular investment and to emphasize that such a description may be brief. The proposal also removes the requirement (set forth at current § 24.5(a)(3)(iv)) that a bank provide the amount of its aggregate outstanding part 24 investments because this element is redundant in light of the required certification of compliance with the investment limits set forth in § 24.4.

Thus, the proposal provides that a national bank may make an investment without prior notification to the OCC if the bank submits an after-the-fact notice to the OCC that includes: (i) A description of the bank's investment; (ii) the amount of the investment; (iii) the percentage of the bank's capital and surplus represented by the investment being self-certified and by the bank's aggregate outstanding public welfare investments; and (iv) a certification that the investment complies with the requirements of §§ 24.3 and 24.4. The proposal also applies these modified requirements to the investment prior approval process described in § 24.5(b).<sup>13</sup> The OCC expects the after-the-fact notices and the investment proposals submitted in accordance with these modified requirements will be significantly shorter than the materials submitted under the current rule.<sup>14</sup>

#### *Examples of Qualifying Public Welfare Investments (§ 24.6)*

The proposal revises § 24.6 to provide additional examples of the types of investments that meet the requirements of § 24.3. For ease of reference, this list is organized by type of activity (such as affordable housing, economic development and job creation, and investments in CDEs). This list is illustrative of the types of investments a bank may make under this part, and national banks are not limited to the listed investments in creating or

expanding their public welfare investment programs.<sup>15</sup>

#### *Conforming Amendments*

As we have explained, the proposal changes the definition of "community development corporation" to "community and economic development entity" to better reflect the range of investment vehicles that may be used for making part 24 investments. The proposal revises the title of part 24 to reflect this change. Thus, the proposed title is "Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments."

The proposal also revises the authority statement of the rule (§ 24.1) to refer to "community and economic development entities" rather than "community development corporations."

#### **III. Comments**

The OCC requests comment on all aspects of this proposal, including the extent to which these proposed changes will encourage more national banks to make public welfare investments. Commenters are also invited to suggest other revisions that would simplify the standards or streamline the procedures currently contained in part 24.

#### **IV. Community Bank Comment Request**

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

#### **V. Solicitation of Comments on Use of Plain Language**

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (November 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?

<sup>13</sup> The proposal does not change the triggers for the prior approval process. Thus, a bank that is ineligible for the after-the-fact notice process must seek prior approval of its investments under 12 CFR 24.5(b)(1), unless the OCC has given it permission to use the after-the-fact notice process under 12 CFR 24.5(a)(4). An eligible bank must seek prior approval of: Investments that would exceed the five percent investment limit; investments in other real estate owned; or other investments determined by the OCC to be ineligible for the after-the-fact notice process. 12 CFR 24.4 and 24.5(a)(5).

<sup>14</sup> The OCC expects to revise the sample forms for investment notification and prior approval to reflect this expectation. These sample forms will be available through the OCC's Community Development Division, (202) 874–4930.

<sup>15</sup> For more examples of the types of investments a bank may make under part 24, see "National Bank Community Development Investments, 2000 Directory."

<sup>11</sup> See 12 CFR 24.5 and 24.6.

<sup>12</sup> See 12 CFR 5.36(d)(2).