

confusion, the final rule abbreviates the term “community and economic development entity” as “CEDE.”

In addition, the final rule modifies the definition of “CEDE” to reflect a change to § 24.3. As explained below, the final rule modifies § 24.3 to permit a national bank to make an investment that either primarily benefits low- and moderate-income individuals or areas or other areas targeted for redevelopment or would receive consideration as a “qualified investment” under the CRA regulations. The final rule accordingly defines a CEDE as an entity that makes investments or conducts activities that primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment or that would receive consideration as “qualified investments” under the CRA.

Finally, because an investment in a small farm may receive CRA consideration under certain circumstances, the final rule modifies the definition of “small business” to include a reference to small farms. Thus, under the final rule, a “small business” is “a business, *including a small farm* or minority-owned business, that meets the qualifications for Small Business Administration Development Company or Small Business Investment Company programs in 13 CFR 121.301.”

Public Welfare Investments (§ 24.3)

Section 24 (Eleventh) 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 through the provision of housing, services, or jobs).” Section 24.3 of the prior rule implemented this authority by providing that a national bank may make an investment under part 24 if two conditions were met. The first, set forth in the former rule at § 24.3(a), was that the investment primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment by providing or supporting one or more of four enumerated public welfare activities.³ The second condition, set forth in the former rule at § 24.3(b), was that the bank demonstrate non-bank community support for, or participation in, the investment.⁴ The NPRM

proposed simplifying the text of § 24.3(a) and deleting § 24.3(b).

1. Simplifying former § 24.3(a).

Proposed § 24.3 would have permitted a national bank to make a part 24 investment if the investment primarily benefited low- and moderate-income individuals or areas or government-targeted redevelopment areas. The proposal deleted the four enumerated public welfare activities set forth in former § 24.3(a)(1)-(4) because they were merely illustrative of the types of investments a national bank may make under this part. In fact, the last is a catch-all provision that would cover all part 24 investments not covered by the first three. As we explained in the preamble to the proposal, the list is unnecessary in light of § 24.6, which sets forth examples of public welfare investments a national bank may make under part 24.

Several commenters proposed further revisions to § 24.3. These commenters suggested that we either eliminate the requirement that an investment primarily benefit low- and moderate-income individuals or areas, or change the regulation so that these individuals or areas need not be the only, or even the primary, beneficiaries of such investments. These commenters note that the “primary benefit” test is not required by statute and that many investment activities that do not meet this test nonetheless promote the public welfare. Several bank commenters also noted that some investments that would receive consideration under the CRA as “qualified investments” do not necessarily satisfy the requirements of part 24. This comment was made, in particular, with respect to small business investments that do not meet part 24’s “primary benefit” test.

We believe that the elimination of the “primary benefit” test in its entirety is inappropriate. First, the primary benefit test provides an objective criterion—the benefit to low- and moderate-income individuals or areas or targeted redevelopment areas—for determining whether an investment “primarily promotes the public welfare” under the statute. Eliminating this objective test would create significant uncertainty

having non-bank community representatives as members of the board of directors of a CEDE or on a separate advisory board for the bank’s community development activities; formation of formal business relationships between the bank and a community organization; contractual agreements with community partners to provide services in connection with the proposed investment; joint ventures with local small businesses; and financing for the proposed investment from the public sector or community development organizations or the receipt of Federal low-income housing tax credits by the project in which the investment is made.

concerning what types of investments are permitted under part 24. Second, removal of the primary benefit test may dilute the public welfare purpose of the statute by weakening the incentive for national banks to identify investments that are sound and profitable but not widely perceived as such.⁵

However, we believe that many of the benefits of the commenters’ suggestions can be achieved by including, as an alternative to investments that satisfy the primary benefit test, investments that would receive consideration as “qualified investments” under the CRA regulations. The CRA regulations provide their own set of objective criteria. Under the CRA regulations, a qualified investment must have as its primary purpose community development, which is defined to include affordable housing; community services targeted to low- or moderate-income individuals; activities that promote economic development by financing small businesses or farms; or activities that stabilize low- or moderate-income geographies.⁶ The final rule incorporates these standards by modifying § 24.3 to permit a bank to make a part 24 investment if the investment primarily benefits low- and moderate-income individuals or areas or government-targeted redevelopment areas or would receive consideration as a “qualified investment” under the CRA regulations.⁷ Examples of such investments are included in new § 24.6.

2. Eliminating former § 24.3(b) (the community support requirement).

The NPRM proposed deleting the community support requirement because it is not required by statute or the comparable rules that apply to other financial institutions that have Federal statutory investment authority similar to section 24 (Eleventh)⁸, and the OCC’s

⁵ For examples of the diverse and creative investments national banks have made under part 24, see “National Bank Community Development Investments, 2001 Directory.”

⁶ 12 CFR 25.12(h) and (s).

⁷ It is important to note that an investment that is permitted under part 24 will not always receive positive consideration under the CRA regulations. Under the CRA regulations, a national bank will receive consideration for qualified investments that benefit its assessment areas or a broader statewide or regional area that includes the bank’s assessment areas. 12 CFR 25.23(a). For example, a retail national bank located only in California would be permitted under part 24 to invest in an entity that provides affordable housing for low- or moderate-income individuals in New York. The California bank would not receive positive consideration for this investment under the CRA regulations, however, because New York is outside its California assessment area and the broader statewide or regional area that includes its assessment area.

⁸ The Federal Reserve Board’s community development regulation (12 CFR 208.22) implements statutory authority (12 U.S.C. 338a) that

³ Under the prior rule, these included affordable housing, equity or debt financing for small businesses, area revitalization or stabilization, and “other activities, services, or facilities that primarily promote the public welfare.”

⁴ Under the prior rule, a bank could demonstrate community support in a variety of ways, including: