

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: a description of the bank's investment; the amount of the investment; the percentage of the bank's capital and surplus represented by the current investment being self-certified and by the bank's aggregate outstanding part 24 investments, including the investment being self-certified; and a certification that the investment complies with the requirements of §§ 24.3 and 24.4.

The NPRM also proposed applying these modified requirements to the investment prior approval process described in § 24.5(b). As a result, the after-the-fact notices and the investment proposals submitted in accordance with these modified requirements would be significantly less burdensome to prepare than are the materials submitted under the current rule while still providing the OCC with sufficient information to determine whether an investment is consistent with safe and sound practices.¹³

The OCC received no comments opposed to these streamlined procedures and several comments in favor of them. Several commenters suggested, however, that we further streamline the self-certification process. One commenter proposed eliminating the required inclusion in the self-certification letter of the percentage of the bank's capital and surplus represented by the current investment and by the bank's aggregate outstanding investments. This commenter noted that neither part 5 nor the FRB's rule requires this information. On the other hand, this information is necessary to enable the OCC to ascertain whether a bank is complying with the statutory investment limit, and requiring its inclusion poses minimal additional burden because the bank itself must calculate the percentage of its capital and surplus represented by the current investment and by its aggregate outstanding investments in order to determine whether it is in compliance with the rule's investment limits. The final rule thus retains this requirement.

A bank commenter also suggested that we eliminate two other differences between the part 24 procedures and the procedures set forth in the FRB's rule.

¹³ Neither the proposal nor the final rule changes the triggers for the prior approval process. Thus, a bank that is not an "eligible bank" under our rules must seek prior approval of its investments. 12 CFR 24.5(b)(1). So must an eligible bank that seeks to exceed the five percent investment limit or to invest in other real estate owned or make some other investment determined by the OCC to be ineligible for the after-the-fact notice process. 12 CFR 24.4 and 24.5(a)(5).

First, the bank suggested that the OCC change the requirement that a bank must notify the OCC within 10 days of making an investment to be consistent with the 30-day period permitted by the FRB. Second, the bank proposed that we eliminate the requirement that a bank must be well-capitalized in order to submit after-the-fact notices because the FRB only requires that a bank be adequately capitalized. We decline to adopt in part 24 the timing and capitalization requirements applied by the FRB in its community development investment regulation. The requirements in part 24 are consistent with requirements applied in connection with certain equity investments under part 5 and achieve the twin objectives of minimizing burden while providing adequate safeguards. The OCC believes that changing these requirements in the context of part 24 may have the unintended consequence of increasing burden on banks by imposing a new and different set of rules applicable to a subset of investments that national banks may make. For these reasons, we have retained the current requirements.

The OCC has revised the sample form (OCC form CD-1) for investment notification and prior approval to reflect the streamlined requirements set forth in this final rule. This sample form is added to the final rule as Appendix 1, is available for downloading on the OCC's Web site at <http://www.occ.treas.gov/cdd/pt24toppage.htm>, and will be available through the OCC's Community Development Division.¹⁴

Examples of Qualifying Public Welfare Investments (§ 24.6)

The NPRM proposed revising § 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 community and economic development entities). As we explained in the preamble to the NPRM, this list is merely 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. The expanded list of eligible investments would help to streamline the notice and application processes, however, by making clear the scope of investments that are eligible and reducing the need

¹⁴ The Community Development Division may be contacted at (202) 874-4930.

for staff to do case-by-case reviews of the permissibility of such investments.

Two commenters suggested additions to this list of examples consistent with the view that we should eliminate or reduce the emphasis in § 24.3 on whether an investment primarily benefits low- and moderate-income persons or areas. Because the final rule amends § 24.3 to permit banks to make investments that would receive consideration as "qualified investments" under the CRA regulations, the final rule includes an additional example in § 24.6 of such an investment.

This example, set forth at § 24.6(b)(2), is of an investment that finances small businesses or small farms that, although not located in low- and moderate-income areas, create a significant number of permanent jobs for low- or moderate-income individuals. As explained in the Interagency Questions and Answers Regarding Community Reinvestments,¹⁵ a national bank would receive positive CRA consideration for such an investment,¹⁶ but would not have been permitted to make it under former § 24.3 because the small businesses or small farms are not located in a low- or moderate-income area or redevelopment area and a majority of the permanent jobs created are not for low- and moderate-income individuals.

Examination, Records, and Remedial Action (§ 24.7)

As explained above, this rulemaking expands the investment opportunities available to national banks under part 24 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. With the expanded examples of qualifying investments, it becomes increasingly important that the bank be able to readily demonstrate that the investment meets the criteria for an eligible investment under part 24. Where a bank relies on an investment being a "qualified investment" under the CRA regulations in order to be

¹⁵ 66 FR 36620 (July 12, 2001).

¹⁶ Interagency Questions and Answers Regarding Community Reinvestments, Q & A _____, 12(h)(3)-1, 66 FR at 36625. A national bank would be permitted to make this investment under the Small Business Investment Act (SBIA), 15 U.S.C. 661 *et seq.* The SBIA authorizes the Small Business Administration to charter private Small Business Investment Companies (SBICs), and authorizes banks to invest in those SBICs. Under the final rule, a national bank could make a similar investment using, for example, a CEDE rather than an SBIC.