



RESCINDED

OCC 2008-22

Subject: Expansion of Eligible Public Welfare Investments

Date: August 21, 2008

To: Chief Executive Officers and Compliance Officers of All National Banks, Department and Division Heads, and All Examining Personnel

Description: Interim Final Rule with Request for Comment (12 CFR 24)

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Test for Public Welfare Investments

Prior to HERA, section 24(Eleventh) authorized national banks to "make investments directly or indirectly, each of which *promotes the public welfare by benefiting primarily low- and moderate-income communities or families* (such as by providing housing, services, or jobs)" (emphasis added).

HERA expanded this grant of authority to provide that national banks may "make investments directly or indirectly, each of which *is designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families* (such as by providing housing, service, or jobs)" (emphasis added). This change effectively restores the public welfare investment test that was in effect prior to enactment of the Financial Services Regulatory Relief Act of 2006 (FSRRA).²

The interim final rule authorizes a national bank and its subsidiaries to make public welfare investments directly or indirectly if the investments primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or if the investment would receive consideration under 12 CFR 25.23 (the Community Reinvestment Act regulations) as a "qualified investment." This standard is substantially similar to the OCC's regulation that was in effect prior to the regulatory changes made to implement the FSRRA. The comment period for this interim final rule ends September 10, 2008.

Regulatory Filings

A national bank should continue to submit a completed CD-1 form to provide an after-the-fact notice or to request prior approval of a public welfare investment (see 73 FR pages 46,536 through 46,539). The CD-1 form is also available on the OCC's Web site at: <http://www.occ.gov/tools-forms/tools/community-affairs/national-bank-part24-investments-pdf.pdf>.

For questions concerning the changes made to section 24(Eleventh) and this interim final rule, please contact the Community Affairs Department at (202) 874-5556, the Community and Consumer Law Division at (202) 874-5750, or the Legislative and Regulatory Activities Division at (202) 874-5090.

Barry R. Wides
Deputy Comptroller for Community Affairs

¹Pub. L. 110-289, 122 Stat. 2,654 (July 30, 2008).

²Pub. L. 109-351, 120 Stat. 1,966 (Oct. 13, 2006).

Related Links

- [Interim Federal Rules, FR 46532](#)

RESCINDED

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the
Currency****12 CFR Part 24**

[Docket ID OCC–2008–0010]

RIN 1557–AD12

**Community and Economic
Development Entities, Community
Development Projects, and Other
Public Welfare Investments****AGENCY:** Office of the Comptroller of the
Currency, Treasury.**ACTION:** Interim final rule with request
for comment.

SUMMARY: On July 30, 2008, the
President signed into law the Housing
and Economic Recovery Act of 2008
(HERA). Section 2503 of the HERA
revises the community development
investment authority in 12 U.S.C.
24(Eleventh) to permit a national bank
to make a broader range of investments
designed primarily to promote the
public welfare. This interim final rule
implements the changes made to section
24(Eleventh) by the HERA.**DATES:** *Effective Date:* This rule is
effective on August 11, 2008.*Comment Date:* Comments must be
received by September 10, 2008.**ADDRESSES:** Because paper mail in the
Washington, DC area and at the OCC is
subject to delay, commenters are
encouraged to submit comments by e-
mail, if possible. Please use the title
“Community Development
Investments” to facilitate the
organization and distribution of the
comments. You may submit comments
by any of the following methods:

- *Federal eRulemaking Portal—*
“Regulations.gov”: Go to *http://*
www.regulations.gov, under the “More
Search Options” tab click next to the
“Advanced Docket Search” option
where indicated, select “Comptroller of
the Currency” from the agency drop-
down menu, then click “Submit.” In the
“Docket ID” column, select “OCC–
2008–0010” to submit or view public
comments and to view supporting and
related materials for this interim final
rule. The “How to Use This Site” link
on the Regulations.gov home page
provides information on using
Regulations.gov, including instructions
for submitting or viewing public
comments, viewing other supporting
and related materials, and viewing the
docket after the close of the comment
period.

- *E-mail:* *regs.comments@occ.*
treas.gov.

- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.

- *Fax:* (202) 874–4448.

- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC–2008–0010” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this interim final rule by any of the following methods:

- *Viewing Comments Electronically:*

Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC–2008–0010” to view public comments for this rulemaking action.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC’s Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT:

Steven VanMeter, Assistant Director, Community and Consumer Law Division, (202) 874–5750; Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities, (202) 874–5090; or Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Introduction

The Financial Services Regulatory Relief Act of 2006 (FSRRA)¹ made a number of changes to 12 U.S.C. 24(Eleventh), the authorizing statute for the Office of the Comptroller of the Currency’s (OCC) community development regulations.² Prior to its amendment by the FSRRA, 12 U.S.C. 24(Eleventh) authorized a national bank “[t]o 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)” (the public welfare test). The FSRRA, among other things, narrowed the grant of authority in section 24(Eleventh) by providing that a national bank may “make investments directly or indirectly, each of which promotes the public welfare by benefiting primarily low- and moderate-income communities or families (such as by providing housing, services, or jobs).” (emphasis added)³

On April 24, 2008, the OCC issued a final rule that implemented the FSRRA’s narrowing of the public welfare test. In the Notice of Proposed Rulemaking that preceded that final rule, the OCC noted that Congress was considering a bill that would change the language of the public welfare test back to the way it existed prior to the FSRRA changes.⁴

On July 30, 2008, the President signed into law the Housing and Economic Recovery Act of 2008 (HERA), which, in part, reinstated the pre-FSRRA wording of the public welfare test.⁵ Specifically, section 2503 of the HERA revised section 24(Eleventh) to provide that a national bank may “* * * make investments directly or indirectly, each of which is 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)” (emphasis added).⁶ Under section 2503 of the HERA and the revisions made by this interim final rule, national banks and their subsidiaries will now be able to make a broader range of investments.

Description of the Interim Final Rule

This interim final rule makes the following specific revisions to part 24 in

order to implement the statutory changes to the public welfare test.

Definition of “Community and Economic Development Entity” (CEDE) (§ 24.2(c))

The interim final rule amends the definition of a CEDE in § 24.2(c) to implement the HERA change to the public welfare test. The revised paragraph (c) 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 would receive consideration as “qualified investments” under 12 CFR 25.23.”

Removing the Definition of “Benefiting Primarily Low- and Moderate-Income Areas or Individuals” (§ 24.2(g))

As indicated above, the FSRRA authorized a national bank and its subsidiaries to make investments that promote the public welfare by “benefiting primarily” low- and moderate-income areas or individuals. OCC’s rule implementing the FSRRA added a definition for “benefiting primarily low and moderate-income areas or individuals.” The HERA revision removed the “benefiting primarily” language, thus, this definition is no longer needed and is removed by the interim final rule.

Public Welfare Investments (§ 24.3)

The interim final rule revises § 24.3, which contains the authorization to make investments pursuant to section 24(Eleventh), to conform to the changes made by the HERA.

Examples of Qualifying Public Welfare Investments (§ 24.6)

Section 24.6 contains examples of qualifying public welfare investments. The interim final rule revises the introductory language in § 24.6 to reflect the changes made by section 2503 of the HERA. The interim final rule also adds back, where appropriate, references to investments in “targeted redevelopment areas.” These references had been removed by the FSRRA implementing regulation.

Revision to Appendix 1 to Part 24, the CD–1 National Bank Community Development (Part 24) Investments Form

The interim final rule also revises Appendix 1 to part 24, the CD–1 National Bank Community Development (Part 24) Investments Form, to reflect the changes to the regulation.

¹ Pub. L. 109–351, 120 Stat. 1966 (Oct. 13, 2006).

² 12 CFR part 24 (2008).

³ Pub. L. 109–351, 120 Stat. 1966 (Oct. 13, 2006).

⁴ 72 FR 36559 (July 3, 2007).

⁵ Pub. L. 110–289, 122 Stat. 2654 (July 30, 2008).

⁶ *Id.*

Effective Date; Solicitation of Comments

This interim final rule will become effective immediately upon publication in the **Federal Register**. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), general notice and an opportunity for public comment are not required prior to the issuance of a final rule when an agency, for good cause, finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.”⁷ Similarly, an agency may publish a final rule with an immediate effective date if the agency finds good cause and publishes such with the rule. 5 U.S.C. 553(d)(3).

Consistent with section 553(b)(B) of the APA, the OCC finds that good cause exists for a finding that notice and comment are impracticable and contrary to the public interest. In enacting the Foreclosure Prevention Act of 2008 (part of the HERA), which includes these changes to 12 U.S.C. 24(Eleventh), Congress stated that all provisions of that Act are designated as “emergency requirements and necessary to meet emergency needs.”⁸ An interim final rule will allow national banks and their subsidiaries immediately to make a broader range of investments to promote the public welfare, including investments in distressed communities affected by rising foreclosures. Immediate issuance of this interim final rule furthers the public interest because it will provide national banks and their subsidiaries with additional flexibility to make public welfare investments in low- and moderate-income individuals or areas or targeted redevelopment areas, or that would receive consideration under the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) as “qualified investments.” For these same reasons, the OCC finds good cause to publish this rule with an immediate effective date. *See* 5 U.S.C. 553(d)(3).

Although notice and comment are not required prior to the effective date of this rule, the OCC invites comment on all aspects of this interim final rule, and intends to revise the interim final rule if necessary or appropriate in light of the comments received.

Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) (RFA) applies only to rules for which an agency publishes a general notice of proposed

rulemaking pursuant to 5 U.S.C. 553(b).⁹ Pursuant to the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(B), general notice and an opportunity for public comment are not required prior to the issuance of a final rule when an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹⁰

As discussed above, the OCC has determined for good cause that the APA does not require general notice and public comment on this interim final rule and, therefore, we are not publishing a general notice of proposed rulemaking. Thus, the RFA, pursuant to 5 U.S.C. 601(2), does not apply to this interim final rule.

Executive Order 12866

The OCC has determined that this interim final rule is not a significant regulatory action under Executive Order 12866. We have concluded that the changes made by this interim final rule will not have an annual effect on the economy of \$100 million or more within the meaning of Executive Order 12866. The OCC further concludes that this interim final rule does not meet any of the other standards for a significant regulatory action set forth in Executive Order 12866.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), we have reviewed the interim final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the interim final rule.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this interim final rule will not result in expenditures by State, local, and tribal governments, or by the

private sector, of \$100 million or more in any one year. Accordingly, the interim final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 24

Community development, Credit, Investments, Low and moderate income housing, National banks, Reporting and recordkeeping requirements, Rural areas, Small businesses.

Authority and Issuance

■ For the reasons set forth in the preamble, part 24 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

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

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

- 2. Amend § 24.2 by:
 - a. Revising the first sentence of paragraph (c);
 - b. Removing paragraph (g); and
 - c. Redesignating paragraphs (h) through (j) as paragraphs (g) through (i), respectively.

The revision reads as follows:

§ 24.2 Definitions.

* * * * *

(c) *Community and economic development entity* (CEDE) means 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 would receive consideration as “qualified investments” under 12 CFR 25.23. * * *

* * * * *

■ 3. Revise § 24.3 to read as follows:

§ 24.3 Public welfare investments.

A national bank or national bank subsidiary may make an investment directly or indirectly under this part if the investment primarily benefits low- and moderate income individuals, low- and moderate income areas, or other areas targeted by a governmental entity for redevelopment, or the investment would receive consideration under 12 CFR 25.23 as a “qualified investment.”

- 4. Amend § 24.6 by:
 - a. Revising the introductory text; and
 - b. Revising paragraphs (b)(1) through (4), (d)(1), and (d)(4).

⁷ 5 U.S.C. 553(b)(B).
⁸ See section 2002 of the HERA, Pub. L. 110–289, 122 Stat. 2654 (July 30, 2008).

⁹ 5 U.S.C. 601(2).
¹⁰ 5 U.S.C. 553(b)(B).

The revisions read as follows:

§ 24.6 Examples of qualifying public welfare investments.

Investments that primarily support the following types of activities are examples of investments that meet the requirements of § 24.3:

* * * * *

(b) * * *

(1) Investments that finance small businesses (including equity or debt financing and investments in an entity that provides loan guarantees) that are located in low- and moderate-income areas or other targeted redevelopment areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments that finance small businesses or small farms, including minority- and women-owned small businesses or small farms, that, although not located in low- and moderate-income areas or targeted redevelopment

areas, create a significant number of permanent jobs for low- and moderate-income individuals;

(3) Investments in an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a low- and moderate-income area or targeted redevelopment area and occupied primarily by small businesses, or that is occupied primarily by small businesses that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals; and

(4) Investments in low- and moderate-income areas or targeted redevelopment areas that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

* * * * *

(d) * * *

(1) Investments that provide credit counseling, financial literacy, job training, community development research, and similar technical

assistance for non-profit community development organizations, low- and moderate-income individuals or areas or targeted redevelopment areas, or small businesses, including minority- and women-owned small businesses, located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

* * * * *

(4) Investments in minority- and women-owned depository institutions that serve primarily low- and moderate-income individuals or low- and moderate-income areas or targeted redevelopment areas.

■ 5. Revise appendix 1 to part 24 to read as follows:

**APPENDIX 1 TO PART 24—CD-1—
NATIONAL BANK COMMUNITY
DEVELOPMENT (PART 24)
INVESTMENTS**

BILLING CODE 4810-33-P



Comptroller of the Currency
Administrator of National Banks

**CD-1 – National Bank Community
Development (Part 24) Investments**

For Official Use Only

OMB Number
1557-0194

A national bank or national bank subsidiary may make an investment directly or indirectly under this part if the investment primarily promotes the public welfare under the community development investment authority in 12 USC 24(Eleventh) and its implementing regulation, 12 CFR 24 (Part 24). Part 24 contains the OCC guidelines to determine whether an investment is designed primarily to promote the public welfare and procedures that apply to those investments. National banks must submit the completed form to provide an after-the-fact notice or to request prior approval of a public welfare investment to the Community Affairs Department, Office of the Comptroller of the Currency, Washington, DC 20219. Please contact the Community Affairs Department at (202) 874-4930 or CommunityAffairs@occ.treas.gov for more information.

PLEASE PROVIDE THE FOLLOWING INFORMATION ABOUT THE INVESTING BANK.

Bank name:	Mailing address (<i>street or P.O. box</i>):
Bank charter number:	City, State, ZIP Code:
Telephone number:	Fax number:
E-mail address:	URL:

CONTACT FOR INFORMATION:

Name of bank contact responsible for form's information:	Name of bank contact responsible for CD investment (if different):
Mailing address (<i>street or P.O. box</i>):	Mailing address (<i>street or P.O. box</i>):
City, State, ZIP Code:	City, State, ZIP Code:
Telephone number:	Telephone number:
Fax number:	Fax number:
E-mail address:	E-mail address:

PLEASE INDICATE THE PROCESS THE BANK REQUESTS BY CHECKING THE APPROPRIATE BOX, BELOW.

- After-the-fact notice (12 CFR 24.5(a)) - complete sections 1 and 2.
- Prior approval (12 CFR 24.5(b)) - complete section 2.

Section 1 – After-The-Fact Notice Only (12 CFR 24.5(a))

A bank may provide an after-the-fact notice of its Part 24 investment if the bank responds affirmatively to all of the following requirements.

The bank is "well-capitalized," as defined in 12 CFR 24.2(j). Yes No

The bank has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Yes No

The bank's most recent Community Reinvestment Act rating is satisfactory or outstanding. Yes No

The bank is not under a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive.

Yes No

Including this investment, the bank's aggregate outstanding investments and commitments under Part 24 do not exceed 5 percent of its capital and surplus, unless the OCC has provided written approval of a written request by the bank allowing the bank to provide after-the-fact notices for investments that would raise the aggregate amount of the bank's Part 24 investments beyond 5 percent of its capital and surplus.

Yes No

The investment does not involve properties carried on the bank's books as "other real estate owned." Yes No

The OCC has not determined, in published guidance, that the investment is inappropriate for the after-the-fact notification. Yes No

Has the bank responded affirmatively to all of the above requirements in order to provide an after-the-fact notice of its Part 24 investment? [The OCC may have provided written notification that the bank may submit Part 24 after-the-fact notices. If so, please provide the date or a copy of the OCC's written notification.]

Yes (The bank may make an investment authorized by 12 USC 24(Eleventh) and this part and notify the OCC within 10 working days by submitting a completed after-the-fact notice.)

No (The bank must seek prior OCC approval of its investment and submit a completed investment proposal before making the investment.)

(To complete the after-the-fact notice process or to request prior OCC approval, please proceed to section 2 of this form.)

Section 2 — All Requests

1. Please indicate how the bank's investment is consistent with Part 24 requirements for public welfare investments, under 12 CFR 24.3.

a. Check at least one of the following that applies to the bank's investment:

The investment primarily benefits low- and moderate-income individuals.

The investment primarily benefits low- and moderate-income areas.

The investment primarily benefits areas targeted for redevelopment by a government entity.

The investment is a "qualified investment" under 12 CFR 25.23 for purposes of the Community Reinvestment Act.

2. Please indicate how the bank's investment is consistent with Part 24 requirements for investment limits under 12 CFR 24.4 by responding to the following questions.

a. Dollar amount of the bank's investment that is the subject of this submission: _____.

b. Percentage of the bank's capital and surplus represented by the bank's investment that is the subject of this submission: _____%.

c. Percentage of the bank's capital and surplus represented by the aggregate outstanding Part 24 investments and commitments, including this investment: _____%.

d. Does this investment expose the bank to unlimited liability?

Yes (This investment cannot be made under Part 24.)

No

3. Please attach a brief description of the bank's investment. (See 12 CFR 24.5(a)(3)(i) and (b)(2)(i)). Include the following information in the description.

a. The name of the community and economic development entity (CEDE) into which the bank's investment has been (or will be) made.

b. The type of bank investment (equity, debt, or other).

c. The activity or activities of the CEDE in which the bank has invested (or will invest). (See examples of qualifying investment activities described in 12 CFR 24.6 (a), (b), (c), and (d).)

d. How the investment is structured so that it does not expose the bank to unlimited liability, such as by describing the structure of the CEDE (e.g., CDC subsidiary, multi-bank CDC, multi-investor CDC, limited partnership, limited liability company, community development bank, community development financial institution, community development entity, community development venture capital fund, community development lending consortia, community development closed-end mutual funds, non-diversified closed-end investment companies, or any other CEDE) and by providing any other relevant information.

e. The geographic area served by the CEDE.

- f. The total funding or other support by community development partners involved in the project (e.g., government or public agencies, nonprofits, other investors), if known.
- g. Supplemental information (e.g., prospectus, annual report, Web address that contains information about the CEDE in which the investment is or will be made), if available.

4. Evidence of qualification is readily available for examination purposes.

The bank maintains information concerning this investment in a form readily accessible and available for examination that supports the certifications contained in this form and demonstrates that the investment meets the standards set out in 12 CFR 24.3, including, where applicable, the criteria of 12 CFR 25.23.

Yes No

5. Certification

The undersigned hereby certifies that the foregoing information in this form is accurate and complete. It is further certified that the undersigned is authorized to file this form on Part 24 investments for the bank.

Name: _____

Title: _____

Signature: _____

Date: _____

DESCRIPTION OF THE BANK'S CD INVESTMENT. (See information previously requested)

(Type the description of the bank's Part 24 investment here. You may type as much text as necessary. You will have access to all of MS Word's editing features.)

Dated: August 5, 2008.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. E8-18410 Filed 8-8-08; 8:45 am]

BILLING CODE 4810-33-C
