

Subpart C—Section 24(Seventh) Leases

§ 23.20 General rule.

Pursuant to 12 U.S.C. 24(Seventh) a national bank may invest in tangible or intangible personal property, including vehicles, manufactured homes, machinery, equipment, furniture, patents, copyrights, and other intellectual property, for the purpose of, or in connection with leasing that property, if the related lease is a conforming lease representing a noncancelable obligation of the lessee (notwithstanding the possible early termination of that lease).

§ 23.21 Estimated residual value.

(a) *Recovery of investment and costs.* A national bank's estimate of the residual value of the property that the bank relies upon to satisfy the requirements of a full-payout lease, for purposes of this subpart:

(1) Must be reasonable in light of the nature of the leased property and all circumstances relevant to the transaction; and

(2) Any unguaranteed amount must not exceed 25 percent of the original cost of the property to the bank.

(b) *Estimated residual value subject to guarantee.* The amount of any estimated residual value guaranteed by the manufacturer, the lessee, or other third party may exceed 25 percent of the original cost of the property if the bank determines, and demonstrates by appropriate documentation, that the guarantor has the resources to meet the guarantee and the guarantor is not an affiliate of the bank.

(c) *Leases to government entities.* A bank's calculations of estimated residual value in connection with leases of personal property to Federal, State, or local governmental entities may be based on future transactions or renewals that the bank reasonably anticipates will occur.

§ 23.22 Transition rule.

(a) *Exclusion.* A Section 24(Seventh) Lease entered into prior to June 12, 1979, may continue to be administered in accordance with the lease terms in effect as of that date. For purposes of applying the lending limits and the restrictions on transactions with affilia-

tes described in § 23.6, however, a national bank that enters into a new extension of credit to a customer, including a lease, on or after June 12, 1979, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a Section 24(Seventh) Lease that was entered into prior to June 12, 1979, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the Section 24(Seventh) Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith, and demonstrates by appropriate documentation, that renewal of the lease is necessary to avoid financial loss and to recover its investment in, and its cost of financing, the leased property.

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

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

SOURCE: 61 FR 49660, Sept. 23, 1996, unless otherwise noted.

§ 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 areas or individuals, 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 other areas targeted for redevelopment by local, state, tribal or Federal government, or provide equity or debt financing for small businesses that are located in such areas or that produce or retain permanent jobs for low- and moderate-income persons. 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 calculated under the OCC's risk-based capital standards set out in Appendix A to 12 CFR part 3 as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161; 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 Appendix A to 12 CFR part 3, as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161.

(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, for purposes of §24.5, a national bank that:

(1) Is well capitalized;

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

(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, including a minority-owned small business, that meets the qualifications for Small Business Administration Development Company or Small Business Investment Company loan programs in 13 CFR 121.301.

(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, low- and moderate-income areas, or other areas targeted for redevelopment by local, state, tribal or Federal

government (including Federal enterprise communities and Federal empowerment zones) 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 debt financing for small businesses;

(3) Area revitalization or stabilization; or

(4) Other activities, services, or facilities that primarily promote the public welfare;

(b) The bank demonstrates that it is not reasonably practicable to obtain other private market financing for the proposed investment;

(c) The bank demonstrates the extent to which the investment benefits communities otherwise served by the bank; and

(d) The bank demonstrates non-bank community support for or participation in the investment. Community support or participation may be demonstrated in a variety of ways, including but not limited to:

(1) In the case of an investment in a CD entity with a board of directors, representation on the board of directors by non-bank community representatives with expertise relevant to the proposed investment;

(2) Establishment of an advisory board for the bank's community development activities that includes non-bank community representatives with expertise relevant to the proposed investment;

(3) Formation of a formal business relationship with a community-based organization in connection with the proposed investment;

(4) Contractual agreements with community partners to provide services in connection with the proposed investment;

(5) Joint ventures with local small businesses in the proposed investment; and

(6) Financing for the proposed investment from the public sector or community development organizations.

§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 it makes an investment, 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 amount of 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;

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(vi) A statement certifying compliance with the requirements of § 24.3 and § 24.4; and

(vii) If a portion of the investment funds projects outside of the areas in which the bank maintains its main office or branches, a statement certifying that no more than 25 percent of 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.

(4) A national bank that is not an eligible bank but that 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 amount of 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 certifying compliance with the requirements of § 24.3 and § 24.4.

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

(i) Whether the investment satisfies the requirements of § 24.3 and § 24.4;

(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 in writing by the OCC, and subject to § 24.4(a), the proposed investment is deemed approved 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 individuals;

(2) 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 that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(3) Investments that provide credit counseling, job training, community development research, and similar

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technical assistance services for non-profit community development organizations, low- and moderate-income individuals or areas, or 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 an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a low- and moderate-income 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;

(5) Investments as a limited partner, or as a partner in an entity that is itself 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- and moderate-income areas that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

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

(8) Investments of a type approved by the Federal Reserve Board under 12 CFR 208.21 for state member banks that are consistent with the requirements of §24.3; and

(9) Investments of a type 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 books as "other real estate owned";

(2) More than 25 percent of 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.

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

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