

§ 23.22

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.

[61 FR 66560, Dec. 18, 1996, as amended at 66 FR 34792, July 2, 2001]

§ 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 affiliates 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

Sec.

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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.

(d) National banks that make loans or investments that are designed primarily to promote the public welfare and that are authorized under provisions of the banking laws other than 12 U.S.C. 24(Eleventh), may do so without regard to the provisions of 12 U.S.C. 24(Eleventh) or this part.

[61 FR 49660, Sept. 23, 1996, as amended at 64 FR 70990, Dec. 20, 1999]

§ 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 non-bank community support for or participation in the investment. Community support or participation may be demonstrated in a variety of ways, including:

(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;