



# RESCINDED

OCC 2003-39

**Subject: Public Welfare Investments**  
**Date: September 9, 2003**

**To: Chief Executive Officers of All National  
Banks, Federal Branches and Agencies,  
Department and Division Heads, and All  
Examining Personnel**

## Description: Final Rule

This rescission does not change the status of the transmitted document. To determine the current status of the transmitted document, refer to the Code of Federal Regulations, [www.occ.gov](http://www.occ.gov), or the original issuer of the document.

- Update the definition section of the regulation to reflect the additional types of public welfare investment structures that have become more common in recent years and that are permissible under the governing statute;
- Add a new option to the public welfare standard by permitting an investment that would receive consideration under CRA as a qualified investment;
- Remove the nonbank community involvement requirement from the public welfare standard;
- Simplify the standards for making public welfare investments;
- Clarify how a national bank calculates the value of its public welfare investments for purposes of complying with the rule's investment limits;
- Simplify the regulation's investment self-certification and prior approval processes; and
- Expand the list of examples of qualifying public welfare investments that satisfy the rule's requirements.

These changes are intended to encourage new and expanded investments by national banks supporting community and economic development efforts by simplifying the regulation and further reducing unnecessary burden associated with part 24 investments.

For questions concerning this final rule, contact Patrick T. Tierney, attorney, or Michele Meyer, counsel, Legislative and Regulatory Activities Division at (202) 874-5090; or Barry Wides, director, or Karen Bellesi, investments manager, Community Development Division at (202) 874-4930.

Julie L. Williams  
First Senior Deputy Comptroller and Chief Counsel

## Related Links

- [68 FR 48771](#)

**PART 1000—[AMENDED]**

■ 2. Section 1000.52 is amended by adding “Broomfield, CO” immediately

following “Boulder, CO” in the table to read as follows:

**§ 1000.52 Adjusted Class I differentials.**  
\* \* \* \* \*

County/parish/city	State	FIPS code	Class I differential adjusted for location
BROOMFIELD .....	CO .....	08014	2.45

**PART 1032—[AMENDED]**

■ 3. In § 1032.2, the county “Broomfield” is added immediately following “Boulder”.

Dated: August 11, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–20817 Filed 8–14–03; 8:45 am]

BILLING CODE 3410–02–U

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 24**

[Docket No. 03–20]

RIN 1557–AC09

**Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending 12 CFR part 24, the regulation governing national bank investments that are designed primarily to promote the public welfare. This final rule updates the regulation to reflect the additional types of public welfare investment structures that have become more common in recent years and that are permissible under the governing statute. It also clarifies the statutory standard that applies to the activities of those entities; simplifies the standards for making public welfare investments; clarifies how a national bank calculates the value of its public welfare investments for purposes of complying with the rule’s investment limits; simplifies the regulation’s investment self-certification and prior approval

processes; and expands the list of examples of qualifying public welfare investments that satisfy the rule’s requirements. The final rule also appends the form national banks may use to inform the OCC about an investment made under part 24. These changes are intended to encourage additional public welfare investments by national banks by simplifying the regulation and further reducing unnecessary burden associated with part 24 investments.

**EFFECTIVE DATE:** September 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** Michele Meyer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874–5750; or Barry Wides, Director, or Karen Bellesi, Investments Manager, Community Development Division, (202) 874–4930.

**SUPPLEMENTARY INFORMATION:**

**The Proposal**

On January 10, 2003, the OCC published a notice of proposed rulemaking (NPRM) to amend 12 CFR part 24.<sup>1</sup> Part 24 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 communities and families, subject to certain percentage-of-capital limitations. The NPRM sought to eliminate unnecessary regulatory requirements associated with these investments and thus make it easier for national banks to use the public welfare investment authority that the statute and regulation provide, consistent with statutory requirements and safety and soundness considerations.

**Description of Comments Received and Final Rule**

The NPRM comment period closed March 11, 2003, and we received 10 comments. Commenters included banks,

a banking trade association, community groups, and individuals. The majority of the commenters supported the proposed changes. A summary of the comments and a description of the final rule follows.

*Definitions (§ 24.2)*

The NPRM proposed adding a new definition of “community and economic development entity” to replace the current definition of “community development corporation.” A community development corporation was defined in the former regulation as a corporation established by one or more insured financial institutions (with or without other investors) “to make one or more investments that meet the requirements of § 24.3.”<sup>2</sup> The proposal defined a community and economic development entity (CDE) as an entity—such as a national bank community development subsidiary, community development financial institution, limited liability company, or limited partnership—that makes investments or conducts activities that primarily benefit low- and moderate-income individuals or areas or other areas targeted for redevelopment. In our view, this proposed definition better reflected the scope of the statute and its legislative history, neither of which restricts the entities in which a national bank may invest to a particular form of organization, provided the bank is not exposed to unlimited liability.

None of the commenters objected to the substance of this proposed definition. Several, however, pointed out that the abbreviation “CDE” could cause confusion because that term is used in the context of the New Markets Tax Credit to refer to an entity that may have similar activities but must meet additional qualifications. To avoid this

<sup>2</sup> The prior rule set forth the criteria for a public welfare investment, including that the investment primarily benefits low- and moderate-income individuals or areas or other areas targeted for redevelopment, and that the bank demonstrates non-bank community support for the investment.

<sup>1</sup> 68 FR 1394 (January 10, 2003).

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.<sup>3</sup> 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.<sup>4</sup> The NPRM

<sup>3</sup> 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.”

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

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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> 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)<sup>8</sup>, and the OCC’s

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

<sup>6</sup> 12 CFR 25.12(h) and (s).

<sup>7</sup> 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.

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

experience in implementing part 24 suggests that investments that otherwise meet the requirements of part 24 will receive the support of the communities benefited.

The OCC received several comments from banks in support of the proposed deletion of this requirement. These commenters echoed our statement in the preamble to the NPRM that most investments that otherwise meet the requirements of part 24 will receive the support of the communities benefited. In addition, the supporting commenters said that mandating community involvement may limit management's ability to realize its own business strategy.

The OCC received no comments voicing opposition to the proposed deletion of the community support requirement either banks or community groups. The final rule therefore deletes the community support requirement.

#### *Investment Limits (§ 24.4)*

Section 24.4 of the rule implements the investment limits imposed by 12 U.S.C. 24 (Eleventh). Under both the regulation and the statute, a national bank's aggregate public welfare investments may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the OCC determines that a higher amount will pose no significant risk to the deposit insurance fund. In no case, however, may a bank's aggregate outstanding part 24 investments exceed 10 percent of its capital and surplus.<sup>9</sup>

The OCC proposed amending § 24.4 to clarify that a bank should follow generally accepted accounting principles (GAAP) when calculating the aggregate amount of its part 24 investments, unless otherwise directed or permitted in writing by the OCC for prudential or safety and soundness reasons. We received two comments on this proposal seeking a further explanation of this clarification.

National banks prepare statements and reports required to be filed with the OCC using accounting standards that are consistent with GAAP. Under GAAP, the valuation method applied to an investment in an entity depends on the nature of the investment<sup>10</sup> and the

is identical in all material respects to 24 (Eleventh) and does not require the demonstration of community support for an investment.

<sup>9</sup> As explained in § 24.1(d), national banks that make loans or investments that are designed primarily to promote the public welfare and that are authorized under provisions other than section 24 (Eleventh) may do so without regard to the provisions—including the capital limitations—of 24 (Eleventh) or part 24.

<sup>10</sup> For example, Statement of Financial Accounting Standards Board No. 115, *Accounting*

degree of the investor's control reflected by the percentage that the investment represents in the entity. Generally, investments over 50 percent are fully consolidated; investments between 20 and 50 percent are valued according to the equity method; and investments under 20 percent may be valued at cost, unless the asset becomes permanently impaired. There are certain circumstances, however, when the application of a particular GAAP valuation method to a part 24 investment may lead to unintended results.

For example, if the equity method of GAAP is applied to a part 24 investment, the value of a bank's part 24 investment carried on the bank's books would be originally recorded at cost but subsequently adjusted periodically to reflect the bank's proportionate share of the investment's earnings or losses, and decreased by any cash dividends or similar distributions from the investment. The use of the equity method would mean that the valuation of the bank's part 24 investment would fluctuate with the profits and losses of the investment. As the investment's profits increase under the equity method, the carrying value of the bank's investment would also increase. Consequently, even if the bank's investment was within the part 24 investment limits when made, this increase in the carrying value under the equity method could cause the investment to later exceed the investment limits.

Conversely, if the part 24 investment incurred losses, the value of the bank's investment would decrease, which would permit the bank to make additional investments without exceeding the investment limit. Thus, although the equity method may better reflect the current value of the bank's investment, its application could limit the investment capacity of banks with the most profitable part 24 investment programs while, contrary to safety and soundness, increasing the investment capacity of banks that make unprofitable part 24 investments.

In such circumstances, it may be appropriate for a bank to use a different method to calculate the aggregate amount of its part 24 investments. For example, under the cost method, the actual cost of a bank's part 24 investment would be used in determining compliance with the

*for Certain Investments in Debt and Equity Securities*, identifies the categories among which national banks must divide their securities holdings as held-to-maturity, trading, and available-for-sale, and provides a different accounting treatment for each category.

statutory investment limit. No further adjustments would be required. As a result, as long as the part 24 investment was within the investment limits when made (and assuming there has been no change in the bank's capital and surplus), a bank's compliance with these limits would be unaffected by profits or losses on the investment.

In order to provide flexibility where the application of a specific GAAP valuation method would be inappropriate, the final rule follows the proposal and amends § 24.4 to provide that a bank should follow GAAP when calculating the aggregate amount of its part 24 investments, unless otherwise directed or permitted in writing by the OCC for prudential or safety and soundness reasons.

#### *Public Welfare Self-Certification and Prior Approval Procedures (§ 24.5)*

An eligible national bank may make qualifying public welfare investments without prior notification to, or approval by, the OCC by submitting a self-certification letter to the OCC within 10 working days after it makes the investment. For all other investments under part 24, a national bank must submit an investment proposal application to the OCC for prior approval. Unless otherwise notified in writing by the OCC, the proposed investment is deemed approved 30 calendar days from the date on which the OCC receives the proposal application.<sup>11</sup>

To emphasize that eligible national banks are not required to seek prior approval of eligible public welfare investments, the NPRM proposed changing the title of § 24.5 to "Public welfare investment after-the-fact notice and prior approval procedures," and changed references in the section from "self-certification" to "after-the-fact notice." The OCC further proposed to simplify the part 24 investment notification processes and make them more consistent with the notification processes established under 12 CFR part 5 for certain equity investments. Under those provisions of part 5, a national bank's written after-the-fact notice of certain equity investments must set forth simply "a description, and the amount, of the bank's investment."<sup>12</sup>

The NPRM proposed revising § 24.5 to make it more consistent with the part 5 equity investment notification procedures and to remove unnecessary administrative impediments to national bank public welfare investments. Thus, the proposal provided that a national

<sup>11</sup> See 12 CFR 24.5 and 24.6.

<sup>12</sup> See 12 CFR 5.36(d)(2).

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.<sup>13</sup>

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.

<sup>13</sup> 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.<sup>14</sup>

#### *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

<sup>14</sup> 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,<sup>15</sup> a national bank would receive positive CRA consideration for such an investment,<sup>16</sup> 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

<sup>15</sup> 66 FR 36620 (July 12, 2001).

<sup>16</sup> 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.

eligible under part 24, this means that the bank's records of its part 24 investment must clearly support the investment as a "qualified investment" under the standards of the CRA regulations. The final rule therefore amends § 24.7(b) to emphasize that a national bank "maintain in its files information adequate to demonstrate that its investments meet the standards set out in § 24.3 and that the bank is otherwise in compliance with the requirements of this part."

#### *Conforming Amendments*

As we have explained, the proposal changes the definition of "community development corporation" to "community and economic development entity" to better reflect the range of investment vehicles that may be used for making part 24 investments. The final rule revises the title of part 24 to reflect this change. Thus, the title of the final rule is "Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments."

The final rule also revises the authority statement of the rule (§ 24.1) to refer to "community and economic development entities" rather than "community development corporations."

#### **Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The OCC has reviewed the impact this final rule will have on small national banks. For purposes of this Regulatory Flexibility Analysis and final rule, the OCC defines "small national banks" to be those banks with less than \$150 million in total assets. Based on that review, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule would reduce regulatory burden on all national banks by simplifying the requirements and procedures applicable to part 24 investments. The economic impact of this final rule on national banks, regardless of size, is not expected to be

significant, though some national banks may benefit from a modest reduction in compliance costs. Accordingly, a regulatory flexibility analysis is not needed.

#### **Executive Order 12866**

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

#### **Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 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 the 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, this rulemaking requires no further analysis under the Unfunded Mandates Act.

#### **Paperwork Reduction Act**

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in the notice of proposed rulemaking (68 FR 1394, January 10, 2003) were submitted to OMB for review and approved by OMB under OMB Control Number 1557-0194.

The OCC solicited comments for 60 days on the information collection requirements contained notice of proposed rulemaking. The OCC received no comments.

The revisions of the information collections contained in the final rule are unchanged from the proposed rule and are expected to reduce annual paperwork burden for respondents because it eliminates certain application and notification requirements. The information collection requirements in this final rule are contained in §§ 24.5(a) and 24.5(b). Section 24.5(a) requires a national bank to submit an after-the-fact

notice of public welfare investments to the OCC. The time per response to complete an after-the-fact notice is estimated to be 1.5 hours and the number of respondents is estimated to be 195 national banks. Section 24.5(b) requires a national bank to submit an investment proposal to the OCC if the bank does not meet the requirements for after-the-fact notification. The time per response to complete an investment proposal is estimated to be 1.5 hours and the number of respondents is estimated to be 22.

Section 24.5(a)(4) contains an existing requirement for certain national banks to submit a letter requesting authority to submit after-the-fact notices of their investments. The time per response is approximately 30 minutes and the number of respondents is estimated to be four.

The likely respondents are national banks.

*Estimated number of respondents:* 221 hours.

*Estimated number of responses:* 221 responses.

*Estimated total burden hours:* 327.5 hours.

#### **List of Subjects in 12 CFR Part 24**

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

#### **Authority and Issuance**

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

■ 1. Revise the part heading of part 24 to read as follows:

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

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

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

■ 3. In part 24, revise all references to "community development corporation" and "CDC" to read "community and economic development entity" and "CEDE," respectively.

■ 4. In § 24.2, revise paragraphs (c) and (h) to read 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. The following is a non-exclusive list of examples of the types of entities that may be CEDEs:

- (1) National bank community development corporation subsidiaries;
- (2) Private or nonbank community development corporations;
- (3) CDFI Fund-certified Community Development Financial Institutions or Community Development Entities;
- (4) Limited liability companies or limited partnerships;
- (5) Community development loan funds or lending consortia;
- (6) Community development real estate investment trusts;
- (7) Business development companies;
- (8) Community development closed-end mutual funds;
- (9) Non-diversified closed-end investment companies; and
- (10) Community development venture or equity capital funds.

\* \* \* \* \*

(h) *Small business* means a business, including a small farm or 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.

■ 5. Revise § 24.3 to read as follows:

**§ 24.3 Public welfare investments.**

A national bank may make an investment 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."

■ 6. In § 24.4, revise paragraph (a) to read as follows:

**§ 24.4 Investment limits.**

(a) *Limits 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 pursuant to § 24.5(b), 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. When calculating the aggregate amount of its aggregate

outstanding investments under this part, a national bank should follow generally accepted accounting principles, unless otherwise directed or permitted in writing by the OCC for prudential or safety and soundness reasons.

\* \* \* \* \*

■ 7. In § 24.5:

- a. Revise the section heading;
- b. Revise paragraph (a) and;
- c. Revise paragraphs (b)(1) and (b)(2) to read as follows:

**§ 24.5 Public welfare investment after-the-fact notice and prior approval procedures.**

(a) *After-the-fact notice of public welfare investments.* (1) Subject to § 24.4(a), an eligible bank may make an investment authorized by 12 U.S.C. 24 (Eleventh) and this part without prior notification to, or approval by, the OCC if the bank follows the after-the-fact notice procedures described in this section.

(2) An eligible bank shall provide an after-the-fact notification of an investment, within 10 working days after it makes the investment, to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219.

(3) The bank's after-the-fact-notice must include:

- (i) A description of the bank's investment;
- (ii) The amount of the investment;
- (iii) The percentage of the bank's capital and surplus represented by the investment that is the subject of the notice and by the bank's aggregate outstanding public welfare investments and commitments, including the investment that is the subject of the notice; and
- (iv) A statement certifying that the investment complies with the requirements of §§ 24.3 and 24.4.

(4) A bank may satisfy the notice requirements of paragraph (3) of this section by completing form CD-1, attached as Appendix 1 to this part.

(5) 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 submit after-the-fact notices of its investments. The Community Development Division considers these requests on a case-by-case basis.

(6) Notwithstanding the provisions of this section, a bank may not submit an after-the-fact notice of an investment if:

- (i) The investment involves properties carried on the bank's books as "other real estate owned"; or

(ii) The OCC determines, in published guidance, that the investment is inappropriate for after-the-fact notice.

(b) *Investments requiring prior approval.* (1) If a national bank does not meet the requirements for after-the-fact investment notification set forth in this part, the bank must submit an investment proposal to the Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219. The bank may use form CD-1, attached to this part as Appendix 1, to satisfy this requirement.

(2) The bank's investment proposal must include:

- (i) A description of the bank's investment;
- (ii) The amount of the investment;
- (iii) The percentage of the bank's capital and surplus represented by the proposed investment and by the bank's aggregate outstanding public welfare investments and commitments, including the proposed investment; and
- (iv) A statement certifying that the investment complies with the requirements of §§ 24.3 and 24.4.

\* \* \* \* \*

■ 8. Revise § 24.6 to 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:

(a) Affordable housing activities, including:

- (1) Investments in an entity that finances, acquires, develops, rehabilitates, manages, sells, or rents housing primarily for low- and moderate-income individuals;
- (2) Investments in a project that develops or operates transitional housing for the homeless;
- (3) Investments in a project that develops or operates special needs housing for disabled or elderly low- and moderate-income individuals; and
- (4) Investments in a project that qualifies for the Federal low-income housing tax credit;

(b) Economic development and job creation investments, including:

- (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 that, although

not located in low- and moderate-income areas or targeted redevelopment areas, create a significant number of permanent jobs for low- or 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;

(c) Investments in CEDEs, including:

(1) Investments in a national bank that has been approved by the OCC as a

national bank with a community development focus;

(2) Investments in a community development financial institution, as defined in 12 U.S.C. 4742(5);

(3) Investments in a CEDE that is eligible to receive New Markets tax credits under 26 U.S.C. 45D; and

(d) Other public welfare investments, including:

(1) Investments that provide credit counseling, job training, community development research, and similar technical assistance services for non-profit community development organizations, low- and moderate-income individuals or areas or targeted redevelopment 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;

(2) Investments of a type approved by the Federal Reserve Board under 12 CFR

208.22 for state member banks that are consistent with the requirements of § 24.3; and

(3) Investments of a type previously determined by the OCC to be permissible under this part.

■ 9. In § 24.7, revise paragraph (b) to read as follows:

**§ 24.7 Examination, records, and remedial action.**

(a) \* \* \*

(b) *Records.* Each national bank shall maintain in its files information adequate to demonstrate that its investments meet the standards set out in § 24.3 of this part, including, where applicable, the criteria of 12 C.F.R. 25.23, and that the bank is otherwise in compliance with the requirements of this part.

\* \* \* \* \*

■ 10. Appendix 1 is added to read as follows:

**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

National banks may make investments designed primarily to promote 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 Director, Community Development Division, Office of the Comptroller of the Currency, Washington, DC 20219. Please contact the Community Development Division at (202) 874-4930 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 6.4(b)(1). 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 are less than 5 percent of its capital and surplus, unless the OCC has provided written approval 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 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, multibank 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: July 10, 2003.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

[FR Doc. 03-20801 Filed 8-14-03; 8:45 am]

BILLING CODE 4810-33-C

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-NM-322-AD; Amendment 39-13221; AD 2003-14-02 R1]

RIN 2120-AA64

#### **Airworthiness Directives; Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects information in an existing airworthiness directive (AD) that applies to certain Bombardier Model CL-600-2B19 (Regional Jet series 100 & 440) airplanes. That AD currently requires a one-time inspection of the aft edge of the left and right main windshields to determine whether a certain placard is installed, and corrective actions if necessary. This document corrects several incorrect references to the affected airplane models. This correction is necessary to ensure that model designations are specified as published in the most recent type certificate data sheet for the affected models.

**DATES:** Effective August 14, 2003.

The incorporation by reference of Bombardier Service Bulletin 601R-56-004, dated August 16, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 14, 2003 (68 FR 41059, July 10, 2003).

**FOR FURTHER INFORMATION CONTACT:** Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7512; fax (516) 568-2716.

**SUPPLEMENTARY INFORMATION:** On July 1, 2003, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2003-14-02, amendment 39-13221 (68 FR 41059, July 10, 2003), which applies to certain Bombardier Model CL-600-2B19 (Regional Jet series 100 & 440) airplanes. That AD requires a one-time inspection of the aft edge of the left and right main

windshields to determine whether a certain placard is installed, and corrective actions if necessary. That AD was prompted by a significant number of cracking incidents that occurred in the inner and middle panes of the main windshields during taxi, takeoff, climb, cruise, and descent of the airplane. The actions required by that AD are intended to prevent stress-related cracking of the windshields, and subsequent excessive frequency of abnormal procedures specified in the airplane flight manual and/or an emergency descent be accomplished, which poses an increased risk to passengers and crew members.

#### **Need for the Correction**

As published, that AD contains several incorrect references to the affected airplane models. As discussed in the preamble of that AD, we intended to revise the applicability of the final rule to identify model designations as published in the most recent type certificate data sheet. However, Regional Jet series "400," which does not exist, was inadvertently indicated in several references instead of the correct model designation Regional Jet series "440." The correct model designation (Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes) was listed in the title of the AD.

The FAA has determined that a correction to AD 2003-14-02 is necessary. The correction will properly specify model designations as published in the most recent type certificate data sheet for the affected models.

#### **Correction of Publication**

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety with the changes incorporated for the convenience of affected operators. The effective date of the AD remains August 14, 2003.

Since this action only specifies model designations as published in the most recent type certificate data sheet for the affected models, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

#### **Restatement of Supplemental Information Section of AD 2003-14-02**

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to certain Bombardier Model

CL-600-2B19 series airplanes was published in the **Federal Register** on May 20, 2002 (67 FR 35461). That action proposed to require a one-time inspection of the aft edge of the left and right main windshields to determine whether a certain placard is installed, and corrective actions if necessary.

#### **List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### **Adoption of the Correction**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### **PART 39—AIRWORTHINESS DIRECTIVES**

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Corrected]**

■ 2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

#### **AD 2003-14-02 R1 Bombardier, Inc.**

(Formerly Canadair): Amendment 39-13221. Docket 2001-NM-322-AD.

**Applicability:** Model CL-600-2B19 (Regional Jet series 100 & 440) airplanes; certificated in any category; serial numbers 7003 and subsequent; equipped with main windshield units, part numbers 601R33033-1, -2, -5, -6, -9, or -10.

**Compliance:** Required as indicated, unless accomplished previously.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent stress-related cracking of the windshields, and subsequent excessive frequency of abnormal procedures specified in the airplane flight manual and/or an emergency descent be accomplished, which poses an increased risk to passengers and crew members; accomplish the following: