



### Public Welfare Investments

Under the OCC's public welfare investment authority, national banks may make investments in community and economic development entities (CEDE) and projects that are designed primarily to promote the public welfare, as specified in [12 USC 24\(Eleventh\)](#) and regulation [12 CFR 24](#). This authority allows national banks to make investments that are not otherwise expressly permitted under the [National Bank Act](#).

#### 12 CFR 24 Requirements

The regulation contains the following requirements relating to public welfare investments:

- Public welfare beneficiary standards
- Investment limits
- Record-keeping
- Direct vs Indirect investments

#### Public Welfare Beneficiary Standards

The Regulation 12 CFR 24 requires that a bank's investment be designed primarily to promote the public welfare, such as by providing housing, services, or jobs. Specifically, under 12 CFR 24.3, a national bank or national bank subsidiary may make an investment directly or indirectly if the investment primarily benefits low- and moderate-income (LMI) individuals, LMI areas, or other areas targeted by a governmental entity

for redevelopment, or else the investment would receive consideration as a "qualified investment"

under 12 CFR 25.23 of the [Community Reinvestment Act \(CRA\)](#).

#### Investment Limits

Under 12 CFR 24.4, the bank's aggregate public welfare investments and outstanding commitments, including the proposed investment, cannot exceed 15 percent of its capital and surplus.

A bank needs written OCC permission if its aggregate investments exceed 5 percent of capital and surplus.

Furthermore, a bank's investment under 12 CFR 24 may not expose it to unlimited liability. Examples of investment structures that do not expose the bank to unlimited liability include: subsidiary community development corporations (CDC), multi-investor CDCs, limited partnerships and limited liability companies, community development financial institutions (CDFI), and community development (CD) loan funds.

#### Record Keeping

Under 12 CFR 24.7(b), each national bank making a public welfare investment under 12 CFR 24 shall maintain in its files information adequate to demonstrate that its investments meet the public welfare beneficiary standards and investment limit requirements.

## Direct vs. Indirect Investments

The regulation, under 12 CFR 24.3, indicates that banks may make public welfare investments “directly” or “indirectly” through CEDEs that make or conduct eligible activities. When a national bank makes an investment directly into a project or makes an investment into a subsidiary CEDE, which in turn invests funds in a project, **each project** in which the bank or the subsidiary CEDE invests must primarily promote the public welfare and meet the public welfare beneficiary standards. If a bank does not control the CEDE in which it invests, the CEDE will not be considered a subsidiary for purposes of 12 USC 24 (Eleventh).

When a national bank makes an investment in a non-subsiary CEDE, the CEDE's activities, **in the aggregate** (as opposed to each project), must meet the primary beneficiary standards.

### **Activities Permissible under 12 CFR 24**

National banks use the public welfare authority to make investments in a variety of activities. Examples of approved public welfare investments are described in the regulation under 12 CFR 24.6 and include projects aimed at providing affordable housing, such as financing and developing housing for the homeless, housing for disabled or elderly LMI individuals, and projects qualifying for Low-Income Housing Tax Credits and/or Federal Historic Rehabilitation Tax Credits for LMI persons.

Banks also may invest in projects promoting economic development and job creation initiatives by producing or retaining jobs for LMI persons, developing and operating commercial or industrial properties in LMI areas, or financing small business and small farms in these targeted areas.

Over the years, banks have used the public welfare investment authority to make innovative community development investments, such as those using renewable energy tax credits. Those investments are more fully described in the

## [OCC's Guide to Community Development Precedent Letters](#)

### **12 CFR 24 Procedures**

Because of the special nature of a bank's public welfare investments, 12 CFR 24 requires banks to notify the OCC through one of three processes:

- After-the-Fact Notification
- Prior Approval Request
- Request to File After the Fact Notices

These processes are described in the regulation under 12 CFR 24.5 and summarized below.

Generally, a bank completes the CD-1- National Bank community development public welfare investment form to provide information about its public welfare investments to the OCC. The CD-1 form allows the bank to provide information about its community development investments—for both the after-the-fact and prior approval procedures.

A PDF version of the [CD-1 form](#) can be downloaded from OCC's Web site.

A bank may access and submit the form electronically through [BankNet](#).

Currently, for the third process, the bank provides a letter to the Community Affairs Department of the OCC that describes its request to file after-the-fact notices.

### After-the-Fact Notification

Banks eligible to provide after-the-fact notifications may make public welfare investments without prior OCC approval. However, they should notify the OCC within 10 days of making the investment. The requirements for after-the-fact notifications are described in 12 CFR 24.5(a).

A bank that is eligible to submit an after-the-fact notification is a “well-capitalized bank” by meeting all of the following criteria outlined in 12 CFR 24.2(e):

- It has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System.
- It has a CRA rating of “Outstanding” or “Satisfactory.”
- It is not subject to a cease-and-desist order, consent order, formal written agreement, or Prompt Corrective Action directive.

If a bank does not meet all of these criteria, it will not be eligible to provide an after-the-fact notification. Instead, the bank will need to submit a prior approval request to the OCC, as described below.

To provide an after-the-fact notification, a bank’s investment must meet the tests for qualifying public welfare investments (12 CFR 24.3) and investment limits (12 CFR 24.4 [b]). A bank’s investment also should be consistent with the examples of qualifying public welfare investments found in 12 CFR 24.6. Furthermore, the investment structure generally should be consistent with the list of examples of the types of CEDEs found in 12 CFR 24.2(c).

#### Prior OCC Approval

If either the bank or the proposed public welfare investment do not meet the requirements for providing an after-the-fact notification, then the bank must submit a request for prior approval and must receive such approval from the OCC before it can make the investment.

In addition, the bank will need to seek permission from the OCC and submit a prior approval request in any of the following situations:

- The bank’s aggregate investments and outstanding commitments, including the proposed investment, exceed 5 percent of its capital and surplus (unless special permission has been granted by the OCC).
- The investment involves properties carried on the bank’s books as “other real estate owned.”

- The OCC determines in published guidance that the investment is inappropriate for submission through the after-the-fact notice process. This information is maintained on the [OCC’s Web site](#).

The process for prior approval and the factors that the OCC considers when evaluating a bank’s proposal are described in 12 CFR 24.5(b).

The OCC generally will notify a bank of the agency’s decision in writing within 30 days after receiving the request. It may extend the review period by notifying the bank.

The OCC may also impose conditions in connection with its approval of an investment. A bank should maintain information concerning its investment in a form that is readily accessible and available for OCC examination.

#### Request to File After-the-Fact Notices

The regulation, under 12 CFR 24.5(a)(5), provides that if a bank is at least adequately capitalized and has a composite rating of at least 3, with improving trends, it may send a letter to the OCC requesting authorization to provide an after-the-fact notification. With that special written permission, the bank may provide after-the-fact notifications to the OCC.

In addition, a bank whose aggregate public welfare investments exceed 5 percent of its capital and surplus may seek OCC permission to provide after-the-fact notifications up to an amount not exceeding 15 percent of capital and surplus.

#### **CD-1 Form**

The CD-1 form contains the information that should be included in a bank’s after-the-fact notification or prior approval requests. For after-the-fact notices, the form asks the bank to state whether the bank is eligible to submit an after-the-fact notification.

It also asks the bank to provide the following information:

- How the bank’s investment is consistent with the requirements for public welfare investments, under 12 CFR 24.3
- How the bank’s investment is consistent with requirements for investment limits under 12 CFR 24.4, including the dollar amount of the investment; the percentage of the bank’s capital and surplus that is represented by the investment; the percentage of the bank’s capital and surplus that is represented by the aggregate outstanding public welfare investments and commitments; and whether the investment exposes the bank to unlimited liability
- A description of the investment, including the name of the CEDE; the type of bank investment; the CEDE’s activities; the structure of the investment; the geographic area served by the CEDE; and other funding or support provided by community partners and public agencies

#### Where to Send the CD-1 Form

The completed CD-1 form should be sent to:

Community Affairs Department  
Office of the Comptroller of the Currency  
Washington, DC 20219

Fax: (202) 874-4652

Email: [CommunityAffairs@occ.treas.gov](mailto:CommunityAffairs@occ.treas.gov)

#### BankNet Filings

National banks may also submit their public welfare investment filings electronically through [BankNet](#).

For more information about using Banknet for submitting public welfare investment applications, please see the fact sheet [Public Welfare Investment Filings on E-Corp](#).

## **Public Welfare Investments and the CRA—Similarities and Differences**

The [CRA under 12 CFR 25](#) and 12 CFR 24 are both used by national banks to promote bank investments benefiting the public. Furthermore, the CRA has an important relationship to 12 CFR 24. An investment that would receive consideration as a “qualified investment” under 12 CFR 25.23 of the CRA is considered to be an investment that meets the public welfare criteria under 12 CFR 24.3.

Likewise, many of the activities undertaken by banks under public welfare investment authority are eligible to receive positive consideration as qualified investments under the CRA. However, the two provisions are shaped by unique features.

Among differences between the CRA and 12 CFR 24 are the purpose and scope of the regulations. Whereas the CRA regulation, 12 CFR 25, establishes the framework and criteria by which examiners assess national banks’ records of helping to meet the credit needs of their communities, 12 CFR 24 provides the legal authority to make investments designed to promote the public welfare, which are not otherwise expressly permitted under the National Banking Act.

Investments made under the CRA must benefit the bank’s assessment area(s). (A bank may receive positive consideration for investments made outside of its assessment area[s] within a broader, regional area that includes its assessment area(s), as long as the bank has adequately addressed the needs of its assessment area[s].) However, investments made under 12 CFR 24 are not subject to geographic restrictions.

Not all CRA investments require 12 CFR 24 as the legal authority. 12 CFR 24 allows national banks to make investments not otherwise expressed under the National Bank Act, such as investing in real estate using Federal Low-Income Housing Tax Credits. Likewise, CRA loans and investments (e.g., mortgage-backed securities) that are expressly permitted under

provisions of banking law other than 12 USC 24(Eleventh) may be made without regard to provisions of 12 CFR 24.

### For More Information

The OCC's Community Affairs Department maintains information about national bank investments in CDCs, community development projects, and other public welfare investments on its [Web site](#).

That site provides banks with a host of community development investment resources, including OCC policy materials, such as:

- [“Common 12 CFR 24 Questions”](#)
- ["At-a-Glance Chart"](#)
- ["Compendium of National Bank Public Welfare Investments"](#)

Also found on the Web site are the OCC's *Community Developments Investments* e-zines and newsletters that provide descriptions of bank community development investments, including:

- Fall 2008, [“Multibank CDCs: Pooling Resources to Strengthen Communities”](#)
- Spring 2007, [“Community Development Venture Capital: A Catalyst for Double-Bottom Line Results”](#)
- Spring 2006, [“Investing in Low-Income Housing Tax Credits: A Sound Opportunity for Community Banks”](#)
- Summer 2005, [“Investment Intermediaries: Helping Banks Achieve a Double Bottom Line”](#)
- Winter 2004/2005, [“Growing Markets with Bank-Owned Community Development Corporations”](#)
- Summer 2004, [“New Markets Tax Credits—Bridging Financing Gaps”](#)
- Summer 2002, [“Community Development Financial Institutions and CD Banks—Natural Partners for Traditional Lenders”](#)

*Fact Sheets* on the [OCC's Web site](#) that include topics that touch on public welfare investments include:

- [“Bank-Owned Community Development Corporations”](#)
- [“CRA: Community Development Loans, Investments, and Services”](#)
- [“Historic Tax Credit Program”](#)
- [“Low-Income Housing Tax Credit Program”](#)
- [“Multibank Partnerships for Community Development Financing”](#)
- [“New Markets Tax Credits”](#)
- [“Public Welfare Investment Filings on e-Corp”](#)

The [OCC's District Community Affairs Officers](#), located in each district, can provide assistance to banks interested in establishing or participating in a CDC, investing in low-income housing tax credit projects, or making other public welfare investments.