



Bank-Owned Community Development Corporations

Bank-owned community development corporations (CDC) provide opportunities for loans and investments that help to increase access to equity capital in underserved urban and rural areas. To increase market penetration and to help move businesses, organizations, and individuals into more traditional banking relationships, many banks use CDCs to supplement their regular loans and services.

The public welfare investment authority provided under [12 CFR 24](#) allows banks to make investments in, and own stock of bank-owned CDCs. The authority requires that the CDC primarily benefits low- and moderate-income (LMI) individuals, LMI areas, or areas targeted by a government entity for redevelopment, or that an investment in a CDC otherwise would be considered as a “qualified investment” under 12 CFR 25.23 of the regulation implementing the [Community Reinvestment Act \(CRA\)](#).

In addition, a bank’s aggregate public welfare investments and outstanding commitments, including the investment in the CDC, cannot exceed 15 percent of its capital and surplus. A bank needs written OCC permission if its aggregate investments, including its investments in the CDC, exceed 5 percent of capital and surplus. Further, a bank’s investment in the CDC may not expose it to unlimited liability.

Bank-Owned CDC Opportunities

Many banks use their CDCs as a means to target new customers and new markets, particularly

those that are LMI, unbanked, and underbanked. CDCs create opportunities for banks to make loans and receive deposits from customers who they might otherwise never see.

CDCs also help banks to build profitable customer relationships with community development providers. Effective CDCs often have strong relationships with local nonprofit organizations and government agencies to provide additional resources and expertise.

CDCs often promote specific bank-driven economic development strategies. The CDC may be the central location within a bank for both community development information and expertise. It also provides a focal point for the bank’s community development marketing activities.

CDCs also provide an effective support for a bank’s CRA compliance strategy. A CDC can help a bank expand its CRA investment opportunities and maximizes external resources and community support. A bank may use its CDC to test products and services and provide more flexible financing to customers.

CDCs often help support positive local reputations for a bank. The results of multifaceted, focused efforts by the CDC and its community partners are more visible within the community and can bring additional capital for economic expansion into the neighborhood.

Bank-Owned CDC Activities

Listed below are some, but not all, of the activities that bank-owned CDCs have financed:

- Loans targeted to minority-owned small businesses
- Subordinated debt for affordable housing and small businesses
- Real estate development
- Equity and near-equity investments in small businesses
- Equity in real estate projects
- Limited partnership investments in: (1) affordable housing projects involving Federal Low-Income Housing Tax Credits; (2) New Markets Tax Credits; and (3) Historic Rehabilitation Tax Credits
- Creation of a community development entity (CDE) in conjunction with the New Markets Tax Credit program
- Technical assistance to small-business owners
- Pre- and post-purchase home buyer counseling

Forming a CDC

As indicated above, a national bank seeking to form and capitalize a CDC may do so under the public welfare investment authority. Regulation 12 CFR 24 requires that a bank provide an after-the-fact notification or seek prior OCC approval by completing the OCC's CD-1 National Bank Community Development Public Welfare Investments form. Each public welfare investment that the CDC then makes must benefit targeted populations or areas, as outlined in 12 CFR 24.3.

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

A bank also may access and download a PDF version of the [CD-1 form](#) from the OCC's Web site.

After-the-Fact Notification

Banks eligible to provide after-the-fact notifications may make public welfare investments in CDCs without prior OCC approval. They should, however, notify the OCC within 10 days of making the investment in the CDC. Generally, for the after-the-fact notification process, a bank's aggregate public welfare investments cannot exceed 5 percent of its capital and surplus. The requirements for after-the-fact notifications are described in 12 CFR 24.5(a).

For the after-the-fact notification process, a bank's public welfare investments must meet the tests for qualifying public welfare investments (12 CFR 24.3) and investment limits (12 CFR 24.4 [b]). Also, the activities undertaken by the CDC should be consistent with the examples of qualifying public welfare investments found at 12 CFR 24.6.

Prior OCC Approval

Generally, a bank must seek prior OCC approval to form and invest in a CDC if the bank is not eligible for the after-the-fact notification process. Furthermore, the prior approval process is required if:

- The bank's aggregate public welfare 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 CDC will undertake activities associated with properties carried on the bank's books as "other real estate owned."

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 in the CDC under 12 CFR 24.

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

E-mail: CommunityAffairs@occ.treas.gov

BankNet Filings

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

CRA Considerations

Bank deposits in, grants to, or shares in CDCs may be considered qualified investments under 12 CFR 25.23 of the CRA regulation [12 CFR 25](#). Additionally, if a bank purchases stock in a CDC that primarily lends in LMI areas or to LMI individuals, the bank may claim a pro rata share of the CDC's loans as community development loans. The bank's pro rata share is based on its percentage of equity ownership in the CDC.

A bank forming a CDC also might want to consider the similarities and differences between the public welfare investment authority and the CRA since both are used by national banks to promote bank investments benefiting the public. Many of the activities undertaken by banks under 12 CFR 24 is eligible to receive positive consideration as qualified investments under the CRA. 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 regulation is considered to be an investment that meets the public welfare criteria under 12 CFR 24.3 of the public welfare investment authority.

However, the two provisions are shaped by unique features. Among the differences separating the CRA from the public welfare investment authority 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 or statewide 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.

In addition, not all CRA investments require the public welfare investment authority 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 and the ownership of stock in a community development bank. 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 undertaken without regard to provisions of 12 CFR 24. Bank loans to CDCs that primarily lend or facilitate lending to promote community development may be considered community development loans.

Market and Mission Considerations

The opportunity for the bank to participate in significant community development activities may be enhanced with a CDC that has strong and effective relationships with local government agencies and nonprofit partners in the community. Obviously those activities are enhanced by a greater number of experts and resources available.

Other guidelines that a bank may consider for a sound and effective CDC operational plan include

- Identification of local financial needs.

- Determination of goals, activities, and scope of the proposed CDC.
- Determination of the geographic scope for the CDC.
- Determination of a mission statement or charter statement for the CDC, including objectives, goals, and activities.
- Determination of the CDC's legal structure.
- Development of articles of incorporation, bylaws, staffing structure, operating activities, lending and investment guidelines, marketing plan, and a community participation plan (if appropriate).

Structural Considerations

A bank may consider the following questions regarding the structure of the CDC and its ability to carry out its mission and activities:

- Will the CDC be an affiliate or a subsidiary?
- Will the CDC be a for-profit or a nonprofit?
- What is the appropriate amount of capitalization for the CDC?
- What is the process for funding the CDC's ongoing operations?
- Will the CDC be a single bank-financed entity or a multi-bank entity in partnership with other banks?
- How will the CDC be staffed and managed, including resources for office space and equipment?
- How will the CDC's activities facilitate the bank's regular lines of business (e.g., referrals back to the bank)?
- What are the CDC's record-keeping and reporting mechanisms and timeframes?

Risks Involved with a Bank-Owned CDC

Although the risks involved with a bank-owned CDC are minimal, partnerships in a CDC should also be aware that investments in CDCs, like other investments, can involve credit, liquidity, compliance, and other risks.

Under public welfare investments, a bank investment in a CDC must not expose the bank to unlimited liability. A bank should have systems and reports in place to ensure that it complies with the percentage capital limitations imposed on national banks making public welfare investments. In addition, a bank should maintain information concerning its public welfare investment in the CDC in a form that is readily accessible and available for OCC examination.

Another point to consider is whether the bank's public welfare investment is "direct" or "indirect." The regulation permits a bank to make an investment through a CDC that makes or conducts eligible activities. When a national bank makes an investment directly into a project or makes an investment into a subsidiary CDC, which in turn invests funds in a project, **each project** in which the bank or the subsidiary CDC invests must primarily promote the public welfare and meet the public welfare beneficiary standards. If a bank does not control the CDC in which it invests, the CDC will not be considered a subsidiary for purposes of 12 USC 24 (Eleventh).

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

For More Information

- OCC's Fall 2010 *Community Development Investments*, "[Public Welfare Investments: A Catalyst for Community Development](#)"
- OCC's Fall 2008 *Community Development Investments*, "[Multibank CDCs: Pooling Resources to Strengthen Communities](#)"
- OCC's Winter 2004/2005 *Community Development Investments*, "[Growing with Bank-Owned Community Development Corporations](#)"
- [Public Welfare Investments 12 CFR 24](#)
- [Contact information for District Community Affairs Officers](#)
- OCC's [Web site](#) for information about national banks' bank-owned CDCs