



**FDIC Community Development Investment Guide**

qualified housing projects  
SBIC  
new markets  
public welfare investments  
mortgage-backed  
securities

FEDERAL DEPOSIT INSURANCE CORPORATION

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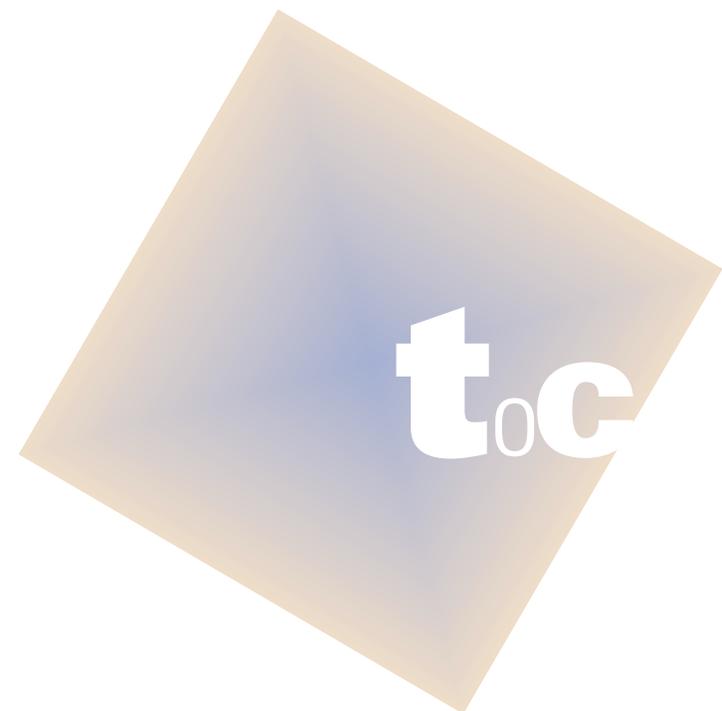
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# Introduction

The Community Reinvestment Act (CRA) requires the Federal Deposit Insurance Corporation (FDIC) to encourage FDIC-supervised institutions<sup>1</sup>, to help meet the credit needs of communities, including low - and moderate - income communities, in which they are chartered. The CRA regulation<sup>2</sup> includes *qualified investments*<sup>3</sup> and other community development activities as essential components for helping to meet these local community credit needs.

The primary purpose of this Guide is to assist insured state non-member banks in assessing community development investment opportunities. It explains the types of investments state non-member banks are authorized to make and how those investments may meet the requirements of a CRA-qualified investment. The Guide can be used as a reference tool for bankers, examiners and other FDIC staff.

The Guide also provides general guidance on some common CRA-qualified investments that have community development as their primary purpose. However, it does not identify all the statutes or regulations that govern every investment situation. Insured state non-member banks and their counsel remain responsible for identifying and complying with state and federal statutes, regulations, financial institution letters, and banking circulars or interpretive letters applicable to a specific investment.

**FDIC Community Affairs staff can provide additional information about community development and investment opportunities. The names and contact information Community Affairs staff are listed on pages 4 and 5:**

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### The Guide explains:

- How a state non-member bank determines whether an investment is permissible and if it satisfies the CRA definition of *qualified investment*.
- How four illustrative investment vehicles may satisfy the CRA definition of *qualified investment*:

Small Business Investment Companies  
New Market Venture Capital Companies  
Qualified housing projects

Community and economic development entities, community development projects and other public welfare investments

- How the following types of investments may be structured to achieve a community development purpose:

General obligation municipal bonds  
Municipal revenue bonds  
Mortgage-backed securities

<sup>1</sup> FDIC-supervised institutions are defined as insured state chartered banks that are not members of the Federal Reserve System. FDIC-supervised institutions will be referred to in this Guide interchangeably as insured state non-member banks, state non-member banks, or state-chartered banks.

<sup>2</sup> This guide presumes the reader is familiar with the CRA (12 U.S.C. §§ 2901-2908) and FDIC's implementing regulation (12 C.F.R. Part 345). Basic information about the CRA is available on the Internet at: [www.ffiec.gov/cra](http://www.ffiec.gov/cra).

<sup>3</sup> Throughout this Guide, the term '*qualified investment*' is used as defined in the CRA regulation 12 C.F.R. § 345.12(s).

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# Section I

*Determining if an investment is permissible, requires FDIC approval, and satisfies the CRA definition of qualified investment*

This section provides information on permissible investments, CRA-qualified investments, and the investment test component of a CRA evaluation.

## 1a Determining whether an investment is legally permissible and whether FDIC approval is needed.

Before making any investment, including a CRA-qualified investment, a state non-member bank must be sure that it is a **permissible** investment.

An investment by a state non-member bank is permissible if it is authorized by state law or regulation of the state in which the bank is chartered. The FDIC cannot authorize a bank to make an investment that is not authorized by state law or regulation.

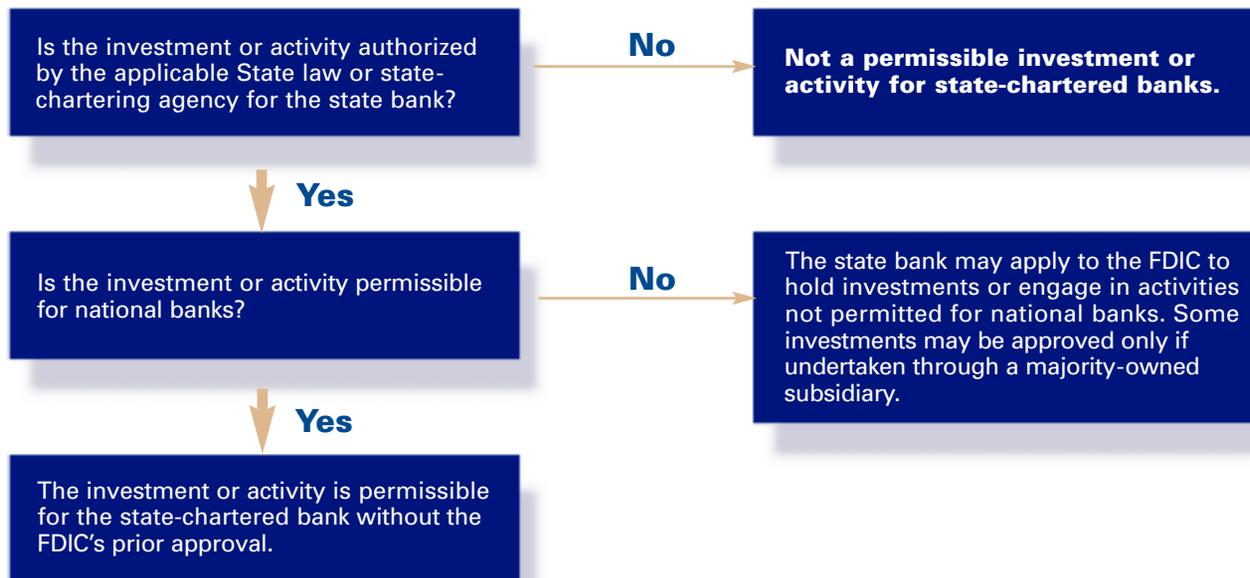
Is FDIC approval required to make a permissible investment?

Provided the investment is authorized by State law or regulation, the bank must then determine if the FDIC's approval is required prior to making the investment.<sup>4</sup> A state non-member bank is **not** required to obtain FDIC's approval to make an investment that is **permissible for a national bank** as authorized by the National Bank Act and other laws and regulations issued by the Office of the Comptroller of the Currency. If the laws and regulations applicable to investments by national banks are more restrictive than State laws (i.e., the investment is permitted by State law, but is not a permissible investment for national banks), the state non-member bank may still make the investment provided the bank obtains the FDIC's approval **before** making an investment or engaging in an activity that is not permissible for national banks.

Figure 1  provides a decision tree illustrating these principles.

<sup>4</sup> The Federal Deposit Insurance Act (FDI Act) and 12 C.F.R. Part 362 (FDIC's governing regulation for investments by state non-member banks) generally require the prior approval of the FDIC for state non-members banks and their subsidiaries to engage in any activities as principal, or make any investments that are not permissible for national banks or their subsidiaries.

**Figure 1:**  
**Decision Tree: What Investments are State Non-Member Banks Permitted to Make?**



As illustrated in Figure 1, there are several questions that must be asked to determine what types of investments are permitted for a state non-member bank. Section 24 of the Federal Deposit Insurance Act (FDI Act) restricts and prohibits insured state banks and their subsidiaries from engaging in activities and making investments that are not permissible for national banks and their subsidiaries. The phrase “activity permissible for a national bank” means any activity authorized for national banks under the National Bank Act, as well as activities recognized as permissible for a national bank in regulations, including 12 C.F.R. Part 24, and official circulars, bulletins, orders or written interpretations issued by the Office of the Comptroller of the Currency (OCC). Other resources that provide guidance on community development investments in addition to the laws, regulations, and interpretations listed here are provided in Appendix II of this guide.

Absent a statutory exception in §24 of the FDI Act, no state non-member bank may directly acquire or retain any equity investment<sup>5</sup> of a type that is not permissible for a national bank. If an investment that is not permissible for a national bank takes the form of an equity investment as defined in 12 C.F.R. Part 362, the investment may not be held directly by a state-chartered bank, but may be made through a majority-owned subsidiary of the state bank if approved by the FDIC by order or regulation.

A summary of the information that should be included in an application for equity investments and other types of investments not permitted for national banks is contained in FDIC regulations (see 12 C.F.R. Part 303.121 Filing Procedures) and in Appendix I of this Guide.

#### **1b Determining if a permissible investment is a CRA-qualified investment**

Bankers must apply definitions contained in the CRA regulation to determine if a permissible investment is also a CRA-qualified investment. Some relevant definitions include:

- **Qualified investment**  
A lawful investment, deposit, membership share, or grant that has as its primary purpose community development. (12 C.F.R. 345.12(s)).
- **Community development**  
Affordable housing (including multifamily rental housing) for low- or moderate- income individuals;  
Community services targeted to low- or moderate- income individuals;  
Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration’s Development Company or Small Business Investment Company programs (13 C.F.R. 121.301) or have gross annual revenues of \$1million or less; or

Activities that revitalize or stabilize low- or moderate-income geographies. (12 C.F.R. 345.12(h)).

- **Low-income**

An individual income that is less than 50% of the area median income or median family income that is less than 50% in the case of a geography. (12 C.F.R. 345.12(n)(1)).

- **Moderate-income**

An individual income that is at least 50% and less than 80% of the area median income or median family income that is at least 50% and less than 80% in the case of a geography. (12 C.F.R. 345.12(n)(2)).

- **Area median income**

The median family income for the Metropolitan Statistical Area (MSA), if a person or geography is located in an MSA; or

The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA. (12 C.F.R. 345.12(b)).

- **Geography**

A census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census. (12 C.F.R. 345.12(l)).

Answers to many common questions about the definition of qualified investments can be found in the Interagency Questions and Answers Regarding Community Reinvestment (Q&As). The Q&As

are issued periodically by the Task Force on Consumer Compliance of the Federal Financial Institutions Examination Council (FFIEC), which is responsible for interpreting the CRA and related regulations. Particularly useful Q&As include:

#### Q & A No. 7

Regarding § 345.12(i): guidance in determining if the **primary purpose** of an investment is community development; and

#### Q & A No. 1

Regarding § 345.12(s): guidance on **lawful investments**.

Q&As that provide guidance on whether certain activities satisfy the CRA definition of qualified investment include:

#### Q & A No. 1

Regarding § 345.12(h)(3): guidance on activities that promote economic development; and

#### Q & A Nos. 2-7

Regarding § 345.12(s): guidance on whether specific examples of lawful investments meet the CRA definition of qualified investments.

<sup>5</sup> The term "equity investment" means an ownership interest in any company; any membership interest that includes a voting right in any company; any interest in real estate; any transaction which in substance falls into any of these categories even though it may be structured as some other form of business transaction; and includes an equity security. The term "equity investment" does not include any of the foregoing if the interest is taken as security for a loan 12 C.F.R. § 362.2(g).

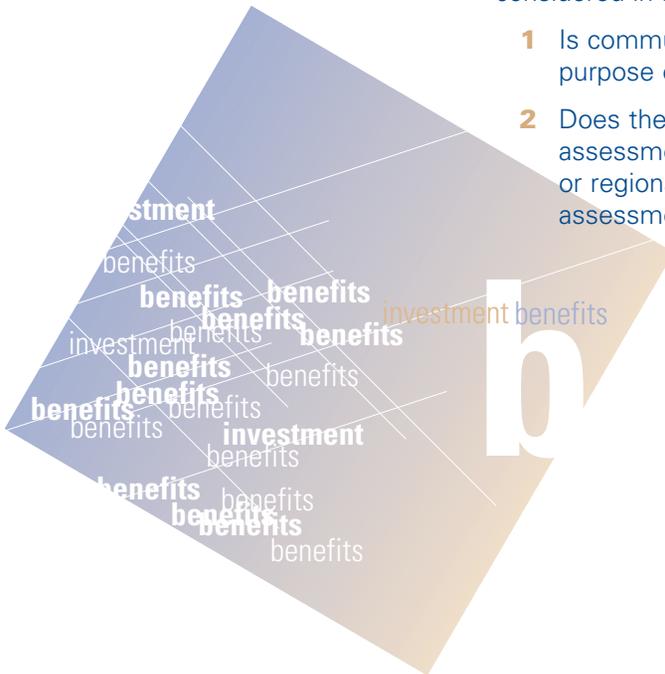
### Ic Determining if an investment will be considered in the bank's CRA evaluation

There are two key determinations to be made before an otherwise lawful investment may be considered in a CRA evaluation:

- 1 Is community development the primary purpose of the investment?
- 2 Does the investment benefit the bank's assessment area or a broader statewide or regional area that includes the bank's assessment area?

There are three circumstances in which qualified investments will be positively considered in a large, retail bank's CRA evaluation:

- The investment **benefits** people or communities within the bank's assessment area(s);
- The investment **benefits** people or communities in a broader statewide or regional area that includes the bank's assessment area(s). People or areas within the bank's assessment area(s) need not receive an immediate or direct benefit from the investment provided the purpose, mandate, or function of the organization or activity includes serving people or locations within the institution's assessment area; or
- The investment **benefits** people or locations anywhere within the broader statewide or regional area surrounding a bank's assessment area (even if the bank's assessment area will not benefit), if the bank, considering its performance context, has adequately addressed the credit and community development needs of its assessment areas(s).



Consideration of qualified investments in a CRA evaluation is not, however, limited to large retail banks subject to the investment test:

- **Strategic Plans**  
Banks electing to be evaluated under a strategic plan must include measurable goals in their plans. A strategic plan must address the bank's lending, investments, and services.
- **Community Development Test**  
State non-member banks that have requested designation and been approved as wholesale or limited-purpose banks also have their qualified investments considered in their CRA evaluation under the community development test. The community development test evaluates a wholesale or limited-purpose bank's community development lending, **qualified investments** and community development services. Because of their more narrow business strategies, wholesale or limited-purpose banks often rely heavily on qualified investments to address their CRA obligations. In addition, community development activities, including qualified investments, located anywhere in the United States may be considered if a wholesale or limited-purpose bank has adequately addressed the needs of its assessment area(s). For additional guidance, see Q&As regarding § 345.25 (d), (e) & (f), regarding the community development test for wholesale or limited purpose institutions.
- **Small Banks**  
Examiners may consider **lending-related activities, such as lending-related qualified investments** and other community development activities, within the first four performance criteria of the small bank test. Lending-related qualified investments will be considered when it is necessary to determine whether an institution meets or exceeds the standards for a satisfactory rating. In addition, a small bank may elect to have all qualified investments and services considered to enhance a satisfactory CRA rating. For additional guidance, see Q&A Nos.1-5 regarding § 345.26(a), performance criteria for small banks.

## Section II

*How four investment vehicles satisfy the CRA definition of qualified investment*

This section explains the key program features, investment limitations, and CRA considerations for four investment vehicles: **Small Business Investment Companies, New Market Venture Capital Companies, Qualified Housing Projects, and Public Welfare Investments.** The federal laws and regulations governing these investments are identified in **Table 1.**

**Table 1: Federal Laws and Regulations Governing Four Investment Vehicles**

Investment	Federal Statute	Federal Regulation
Small Business Investment Companies	15 U.S.C. § 682(b)	13 C.F.R. Part 107
New Market Venture Capital Companies	15 U.S.C. § 689	13 C.F.R. Part 108
Qualified Housing Projects	12 U.S.C. § 1831a(c)(3)	12 C.F.R. Part 362.3(a)(2)(ii)
Public Welfare Investments	12 U.S.C. § 24 (Eleventh)	12 C.F.R. Part 24

If permitted by state law, investment in these four vehicles, when made within the bank's assessment area(s) or when the investment otherwise benefits a bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s), will receive, with few exceptions, positive consideration in a bank's CRA evaluation. It is important to remember, however, not all investments are treated equally, even if they are the same investment vehicle. Each investment will be weighted qualitatively depending on the performance context of the institution, the responsiveness of the investment to credit and community development needs, the innovation or complexity of the investment, and the degree to which private investors might routinely invest in the particular type of investment.

Key program features, the investment limitations, and CRA considerations for each of these investment vehicles are described below.

### IIa **Small Business Investment Companies (SBICs)**

#### **Key Program Features**

The U.S. Small Business Administration's (SBA) SBIC program is a private-sector partnership with the U.S. government. Licensed and regulated by the SBA, SBICs are privately owned and managed for-profit venture capital firms. Private owners and managers make all investment decisions and otherwise control the operations of SBICs, as long as they operate within the SBA regulations under which they are licensed.

Every SBIC must raise from \$5 to \$10 million in private capital and meet stringent management qualifications to be licensed by the SBA.

SBICs provide long-term debt and equity securities to small businesses as start-up capital or investment capital in established businesses. SBICs, through a public/private partnership, provide small businesses access to otherwise limited capital market opportunities. These businesses possess generally less than \$18 million in net assets or \$6 million in annual net income and are represented in a variety of industries such as manufacturing, services and wholesale trade. SBICs raise private capital from individuals, corporations, banks, and other institutional investors. SBICs have provided over \$19 billion in long-term debt and equity capital to more than 90,000 small companies since the program's creation in 1958.

Once SBICs are licensed, the SBA may supplement their capital. The supplemental funds provided through SBA guarantees are known as leverage and may equal two to three times the invested private capital. SBICs must repay the SBA leverage with interest (and in some cases a percentage of profits) before the private investors receive a return on their original investments.

#### **Investment Limits**

State and national banks are authorized to invest in SBICs by the Small Business Investment Act of 1958 (Act), and are not required to obtain prior

approval from their regulators. The Office of the Comptroller of the Currency in Interpretive Letter #832 has determined that a national bank may also invest in an SBIC that is in the process of organizing prior to being licensed by the SBA. Because such activity has been approved for national banks, when permitted by state law, state non-member banks are not required to obtain prior approval or notify the FDIC after investing in SBICs that are organizing to be licensed by the SBA. The Act limits the aggregate of all SBIC ownership interests to no more than **five percent of a state or national bank's capital and surplus.**

#### **CRA Considerations**

The agencies have determined that any loan to or investment in an SBIC promotes economic development by financing small businesses, and therefore, meets the definition of a qualified investment for CRA purposes. For more on SBICs, see Q&A No. 1 regarding § 345.12(h)(3) and Q&A No. 4 regarding § 345.12(s).

The SBA limits an SBIC's equity investments to small businesses within the United States, but imposes no other geographic restrictions. However, SBICs sometimes establish a large, multi-state regional service area to have adequate scope to identify safe and sound equity investments. A bank's investment in an SBIC that includes the bank's assessment area in the SBIC's regional service area will qualify for positive consideration in the bank's CRA examination.

## IIb New Market Venture Capital Companies (New Market)

### Key Program Features

New Market companies are newly formed for-profit investment funds with private management. Their objectives are to promote economic development and to create wealth and job opportunities in low-income geographic areas and among individuals living in such areas. New Market companies make equity-type investments in smaller enterprises located in low-income geographic areas or in areas targeted for economic revitalization.

The New Market program is modeled on the SBIC program. Unlike the SBIC program, however, the SBA does not license New Market companies. Rather, the SBA designates and enters into a participation agreement with each New Market company that details, among other things, the specific low-income areas it serves, how it serves them, what results it achieves, and how it measures its success.

In addition to administering the New Market program, the SBA provides debenture guarantees and technical assistance funds. Each New Market company must raise a minimum of \$5 million of private capital for investments. This capital cannot come from agencies or departments of the federal government. A New Market company is also required to raise resources to match the operational assistance grant funds they receive

from the SBA. Operational assistance resources provide support to the New Market portfolio companies. Resources can be in the form of cash or binding commitments obtained from any source other than the SBA.

At least 80% of the businesses receiving a New Market company's investments must be Smaller Enterprises<sup>6</sup> located in low-income geographies<sup>7</sup>, and must have received Equity Capital Investments. Investment in larger companies are permitted if they qualify as Smaller Enterprises based upon employment or revenue criteria for their industry.

### Investment Limits

State and national banks are authorized by the Community Renewal and Tax Relief Act of 2000 to invest in New Market companies without prior approval of their regulators. State banks may invest in the capital base up to no more than **five percent of the state bank's capital and surplus**, or may provide technical assistance resources for a New Market company. New Market companies were created based on the SBIC model, for which banks are not required to obtain prior approval or notify their primary federal regulator after making the investment. New Market companies also meet the requirements of a public welfare investment under 12 C.F.R. Part 24 Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments (See subsection II.d. of this Section). State non-member banks are not

<sup>6</sup> Smaller Enterprises are defined by SBA regulations as companies with net annual after tax profits not exceeding \$2 million for the previous 2 years, and net worth not exceeding \$6 million.

<sup>7</sup> Low-income geographic areas for New Market purposes are defined as: any census tract or equivalent county division in which the poverty rate is 20% or more; any census tract or equivalent county division within a metropolitan area and in which 50% or more of the households in that tract or division have an income below 60% of the area median gross income; any census tract or equivalent county division not in a metropolitan area in which the median household income does not exceed 80% of the statewide median household income; or any area located within a HUB Zone, an Urban or Rural Empowerment Zone, or an Urban or Rural Enterprise Community.

required to obtain prior approval or to notify the FDIC after investing in public welfare investments provided the investment meets the criteria of section 24.3 of 12 C.F.R. Part 24. A New Market company in the process of organizing also meets the requirements of Part 24. As such, when permitted by state law, a state non-member bank may invest, without prior FDIC approval, in a New Market company in the process of organizing to enter into a participation agreement with the SBA.

### CRA Considerations

The agencies have determined that any loan to or investment in a New Market company promotes economic development and, therefore, presumptively meets the definition of a qualified investment. For more on New Market companies see Q&A No. 1 regarding § 345.12(h)(3) and Q&A No. 4 regarding § 345.12(s).

### IIc Qualified Housing Projects

#### Key Program Features

Provisions in the FDI Act and 12 C.F.R. 362.3(a)(2)(ii) define and set forth the definition and specific requirements for insured state non-member banks to invest in *qualified housing projects*:

- *Qualified housing project* means residential real estate intended primarily to benefit lower-income persons throughout the period of the bank's investment. 12 C.F.R. § 362.3(a)(2)(ii). "Lower income" has a meaning similar to the meaning

### Figure 2: Low Income Housing Tax Credits (LIHTC)

The LIHTC was created in the Tax Reform Act of 1986 as a new approach to affordable housing tax incentives. Investors receive a credit against federal tax owed in return for providing funds to developers to help build or renovate housing for low-income renters. The capital subsidy allows rents to be set below the cost of developing and maintaining the property. LIHTCs provide equity investors with an attractive return that is not generated from rental income, thus increasing housing affordability for low- and moderate-income renters. The maximum amount of credits for which an investor is eligible is equal to approximately 9 percent of the cost of building the housing, paid out in equal amounts over 10 years.

The LIHTC functions as a block grant managed at the state level. Each state is permitted to allocate a certain amount of tax credits annually based on its population (\$1.75 of credits per capita). States are required to give priority to projects with the lowest intermediary costs unless this impedes development of projects in hard to develop areas. Preference is also given to developments serving the lowest-income residents and to those promising to serve qualifying residents for the longest periods. (Excerpts from "The Low-Income Housing Tax Credit", January 1996, Enterprise Foundation.)

of "low-income" and "moderate-income" as defined in 12 C.F.R. § 345.12(n)(1) and (2). If the CRA definition of "low- or moderate-income" were satisfied along with other CRA-related requirements, a qualified housing project would be considered a qualified investment for CRA purposes.

- A qualified housing project includes any project that has received an award of Low Income Housing Tax Credits (LIHTCs), such as a reservation or allocation of credits from a state or local housing credit agency under Section 42 of the Internal Revenue Code (26 U.S.C. § 42). See Figure 2, above, for more information about LIHTCs.

- A residential real estate project that does not qualify for the tax credit under Section 42 of the Internal Revenue Code will nonetheless qualify as a qualified housing project if 50 percent or more of the housing units are to be occupied by lower-income persons.
- A project will be considered residential despite the fact that some portion of the project's total square footage is used for commercial purposes, provided that such commercial use is not the project's primary purpose.

#### Investment Limits

The FDI Act and 12 C.F.R. § 362.3(a)(2)(ii) allow state non-member banks to invest up to **two percent of total assets**<sup>8</sup> in *qualified housing projects* without notification or application to the FDIC. A state non-member bank may invest as a **limited partner** in a partnership or as a **non-controlling interest holder** of a limited liability company the sole purpose of which is to invest in the acquisition, rehabilitation, or new construction of a qualified housing project.

A state non-member bank must obtain the FDIC's prior approval if the bank's aggregate investment in qualified housing projects (including legally binding commitments) were to exceed two percent of total assets as of the date of the bank's most recent consolidated report of condition prior to making the investment. *Aggregate investment* means the total book value of the bank's investment in the real estate calculated

in accordance with the instructions for preparing the consolidated report of condition. 12 C.F.R. § 362.3(a)(2)(ii).

#### CRA Considerations

Although examiners may review each investment and make case-by-case determinations, historically most qualified housing projects have satisfied the CRA definition of qualified investment. Community development includes affordable housing (including multifamily rental housing) for low- or moderate-income individuals, which, by definition, would include qualified housing projects.

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

##### Key Program Features

The FDIC does not provide regulatory guidance for investing in community and economic development entities, community development projects and other public welfare investments. However, insured state non-member banks, if permitted by state law, may invest in vehicles that are permissible for national banks under applicable statutes and regulations. The OCC's regulations allow 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. 12 C.F.R. Part 24. Guidelines contained in 12 C.F.R. Part 24 establish

requirements for investments in community and economic development entities (CEDE), community development projects, and other public welfare investments. Such investments:

- May not expose the bank to unlimited liability;
- Must primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment or be an investment that would receive consideration under 12 C.F.R. 25.23, or for state non-member banks, 12 C.F.R. Part 345.23 as a “qualified investment.”

### Investment Limits

State non-member banks may invest in CEDEs, community development projects and other public welfare investments that meet the requirements of 12 C.F.R. § 24.3 without prior approval of the FDIC. Except for *qualified housing projects* (see previous subsection—*Qualified Housing Projects*), the FDIC does not impose specific amount limits on individual or aggregate public welfare investments by insured state non-member banks. Insured state non-member banks remain subject, however, to any investment amount limits provided in their state law. Additionally, some states may impose notification or application requirements for certain investments. Even when a state does impose a notification or application requirement, insured state non-member banks are not required to notify or apply to the FDIC before or after making public welfare investments that are permissible for national banks.<sup>9</sup>

To determine if an investment is a public welfare investment state chartered banks should refer to the OCC regulation. The OCC regulation includes examples of investments that satisfy the OCC’s standards for public welfare investments (12 C.F.R. § 24.6(a)). Although the examples are not all-inclusive, **a state bank should proceed with caution in concluding that an investment is a public welfare investment if the OCC has not specifically identified it as such.**

Examples of public welfare investments identified in the OCC regulation include investments in:

#### Affordable housing activities, including:

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

<sup>8</sup> This investment limit applies uniquely to insured state-chartered banks. National banks and state or federal savings associations investing in affordable housing are not subject to the Section 362.3 provisions related to *qualified housing projects*; they are subject to similar, but not identical, provisions in other regulations. For example, the next subsection of this Guide, *Community Development Corporations, Community Development Projects, and Other Public Welfare Investments*, discusses a regulation permitting national banks to invest in affordable housing developments, including, but not necessarily limited to, qualified housing projects, as defined in 12 C.F.R. Part 362.

<sup>9</sup> National banks must notify the OCC within 10 days after investments are made provided they meet specified eligibility standards for after-the-fact notice of investment. If they do not meet the standards, they must obtain prior OCC approval. 12 CFR § 24.2(e), 24.4(a) and 24.5(a).

### **Economic development and job creation investments, including:**

- 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;
- 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;
- Investments in entities that acquire, develop, rehabilitate, manage, sell, or rent 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
- 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;

### **Investments in CEDEs, including:**

- Investments in a national bank that have been approved by the OCC as a national bank with a community development focus;
- Investments in a community development financial institution, as defined in 12 U.S.C. 4742(5);
- Investments in a CEDE that is eligible to receive New Markets tax credits under 26 U.S.C. 45D; and

### **Other public welfare investments, including:**

- Investments that provide credit counseling, job training, community development research, and similar technical assistance services for nonprofit 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;
- Investments of a type approved by the Federal Reserve Board under 12 C. F. R. 208.22 for state member banks that are consistent with the requirements of § 24.3; and
- Investments of a type previously determined by the OCC to be permissible under 12 C. F. R Part 24.

12 C.F.R. § 24.5(a)(5) requires national banks to obtain the OCC's approval before making a public welfare investment when:

- The investment involves properties carried on the bank's books as other real estate owned; or
- The OCC publishes guidance that the investment is inappropriate for after-the-fact notice of public welfare investments.

The FDIC encourages state non-member banks to consult with the FDIC before engaging in public welfare investments involving "other real estate owned," or investments identified by the OCC as inappropriate for after-the-fact notification of public welfare investments.<sup>10</sup>

An insured state non-member bank also may rely on the opinion of its legal counsel in determining if a public welfare investment is permissible for a national bank. Further, if a state non-member bank is uncertain of whether an investment qualifies as a public welfare investment, the bank may file an application for consent to hold the investment under Part 362 of the FDIC regulations. If the FDIC concludes that the OCC would consider the investment primarily to promote the public welfare, the bank will be informed that the application is unnecessary; otherwise, the request will be processed. Finally, as always, when an insured state non-member bank has a question about its investment activities, it may contact the FDIC regional or area office that oversees the bank's headquarters. A list of the regional and area offices is included in

Appendix I and is available on the FDIC's Internet site: [www.fdic.gov/about/contact/regional/index.html](http://www.fdic.gov/about/contact/regional/index.html).

### **CRA Considerations**

The definitions of *qualified investment* and *community development* contained in the CRA regulations are consistent with, although not identical to, the eligibility standards for public welfare investments. 12 C.F.R. § 24.3(a). Although CRA examiners may review each investment and make case-by-case determinations, historically, most public welfare investments have satisfied the CRA definition of qualified investment.



<sup>10</sup> The OCC indicates that as of the publication date of this guide, the agency has not issued guidance identifying investments that are inappropriate for after-the-fact notice of investment.

## Section III

### *Structuring other investments to achieve a community development purpose.*

A number of other investments that typically do not meet the requirements of a CRA-qualified investment may be structured to achieve a community development purpose and be a CRA-qualified investment. The following are examples of investments that may be structured to achieve a community development purpose.

- General Obligation Municipal Bonds;
- Municipal Revenue Bonds; and
- Mortgage-Back Securities.

Most of these investments, if structured to achieve a community development purpose, are also likely to meet the criteria for public welfare investments (see Section II of this Guide). To the extent that an investment meets the requirements of both the OCC public welfare regulations and other national banking laws or regulations, state non-member banks may use the provisions of either or both in determining if the FDIC's approval is required to make the investment.

#### **IIIa General Obligation Municipal Bonds**

A general obligation municipal bond, or state debt obligation, is backed by the full faith and credit and taxing authority of the government issuer. These bonds do not generally meet the requirements of a CRA-qualified investment. The public improvements normally financed with a general obligation municipal bond, such as bridges, highways, or schools, typically benefit the greater community and are not targeted to low- and moderate-income neighborhoods. However, a municipal bond issued to fund public

improvements that stabilize or revitalize a low- or moderate-income neighborhood would satisfy the CRA definition of qualified investment.

#### **IIIb Municipal Revenue Bonds**

Municipal revenue bonds pay principal and interest from the revenue generated by the projects being financed. Unlike general obligation municipal bonds, revenue bonds are not backed by the full faith and credit of the state or municipality authorizing the bond issue. Municipal revenue bonds funding community development activities, such as affordable housing or economic development benefiting lower-income people satisfy the CRA definition of qualified investments.

Many states have created independent state agencies authorized to issue revenue bonds for affordable housing, economic development, and other purposes. In some cases, the missions of these agencies are consistent with the CRA definitions of *qualified investment* and *community development*; in others, they are more expansive. For example, most state housing finance agencies (HFAs) have a stated mission of affordable housing, but set maximum income limits that are greater than the CRA definition of low- and moderate-income. Nonetheless, the majority of the mortgages made or purchased by an HFA may benefit low- and moderate-income borrowers or renters as defined in the CRA regulation. Thus most, but not all, HFA bonds satisfy the CRA definition of qualified investments.

Similarly, state agencies may establish different economic development priorities. For example, revenue bonds, such as industrial development bonds for the purpose of increasing the state tax base or job creation incorporating highly skilled and highly paid jobs would generally not be considered qualified investments. In contrast, for example, industrial development revenue bonds would be qualified investments if they fund programs creating economic opportunities for low- and moderate-income people or in low- and moderate-income areas.

### IIIc Mortgage-Backed Securities

A mortgage-backed security is a debt obligation secured by a pool of underlying mortgages that carries a guarantee of timely payment of principal and interest. Mortgage-backed securities do not typically meet the requirements of a CRA-qualified investment because the pool of mortgages securing the instrument often includes mortgages of borrowers of all income levels. However, a mortgage-backed security can be structured to meet a primary purpose of community development and meet the requirements of a CRA-qualified investment.

A CRA-qualified mortgage-backed security must be backed by loans made to low- or moderate-income borrowers and have a community development purpose. A mortgage-backed security with a community development purpose would be backed by loans to low- or moderate-income borrowers that:

- have terms and fee structures appropriate for the credit risk of the borrower;
- are financially beneficial to the borrower; and
- meet fair lending and loan disclosure and settlement laws and regulations. (For more information, see Q&A No. 1 regarding 345.28(c), discriminatory or other illegal credit practices.)

The mortgage-backed security prospectus should clearly identify the loan underwriting characteristics of the mortgage instruments backing the security. State banks investing in mortgage-backed securities marketed as CRA-qualified investments are encouraged to conduct due diligence to ensure that the security meets a primary purpose of community development. For more guidance on structured mortgage-backed securities or municipal bonds refer to Q & A No. 2 regarding § 345.12(s).

# Appendix I

## *Application Guidelines under Part 362 and Part 303*

### General Information

This guidance is designed to assist state-chartered banks applying to the FDIC to engage in as principal activities or make investments that are not permissible for national banks. An application can be a letter or a copy of a notice or application the bank has filed with another federal or state regulatory authority. However, the filing must include the information set forth below. The FDIC regional director may request additional information.

### Filing Instructions

File one copy of the application with the appropriate FDIC regional director within the Division of Supervision and Consumer Protection. When a state non-member bank is not part of a group of related institutions, the appropriate FDIC regional or area office, is that office where the state bank (or proposed state bank) is located (or will be located). For a state non-member bank that is part of a group of related institutions, the appropriate FDIC regional or area office is typically the one where the group's major policy and decision makers are located.

### Type of Application

The type of application or notification a bank must submit to the FDIC and whether prior FDIC approval is necessary will depend upon the type

of investment to be made. 12 C.F.R. Part 362 of the FDIC Rules and Regulations states what type of application or notification is necessary for each type of investment for a state non-member bank and its majority-owned subsidiaries.

### Information to Include in the Application

The required application or notification should be filed in accordance with 12 C.F.R. Part 303 and should include the following information:

- Indicate whether the application falls under the expedited "notice" provisions or is being filed as an application. (If the bank and the subsidiary that will engage in the activity meet specific eligibility requirements set out in Part 362, the notice provisions are available for certain real estate and securities underwriting activities. The application process is available for all other activities that fall outside the specific notice requirements.)
- Bank name, address and contact person.
- Brief description of the proposed activity and the manner in which it will be conducted.
- The amount of the bank's existing and proposed direct or indirect investment in the activity, including calculations showing that the bank complies with any specific capital ratios or investment percentage limits outlined in subpart A of Part 362.

- Brief description of the bank's policy and practice regarding anticipated involvement in the activity by a director, executive officer or principal shareholder (insider) of the bank or any related interest of an insider.
- The state statute or regulation that authorizes the activity.
- A copy of the approval order or similar document from the appropriate regulatory authority granting permission for the bank to conduct the activity, if the approval is necessary and has already been granted. (This provision only applies if the state regulatory authority requires formal approval to engage in the activity.)
- A copy of the bank's business plan for this activity.
- Description of the bank's expertise in the proposed activity.
- Officer signature on the application.

### Notice and Application Processing

The FDIC generally processes a notice filing within 30 days of receipt with a possible extension of 15 days. These expedited time frames only apply if the bank has provided the FDIC with all required information. The FDIC regional director will provide a written acknowledgment that the FDIC has received the notice and will specify the date after which the bank or its subsidiary may begin the activity or continue the activity as proposed. After providing prompt written notice to the insured

state bank, the FDIC regional director may remove the notice from expedited processing if the notice presents a significant supervisory concern, policy issue, or legal issue or if the FDIC determines that other good cause exists for the removal.

The FDIC will generally process an application and indicate whether the bank has received approval to engage in the proposed activity within 60 days, with a possible 30 day extension, assuming that the bank provided all required information. The bank or its subsidiary may not engage in the activity until the FDIC formally approves the application.

### Questions

For questions regarding the requirements for filing an application or notice under part 362 as outlined in this guide, contact your regional or area FDIC office.

<b>Atlanta Regional Office</b> 10 Tenth Street, NE Suite 800 Atlanta, GA 30309 678 916-2246	<b>Boston Area Office</b> 15 Braintree Hill Office Park Braintree, MA 02184 781 794-5500	<b>Chicago Regional Office</b> 500 West Monroe Street Suite 3200 Chicago, IL 60661 312 382-7550	<b>Dallas Regional Office</b> 1910 Pacific Avenue Dallas, TX 75201 214 754-0098
<b>Kansas City Regional Office</b> 2345 Grand Avenue Suite 1500 Kansas City, MO 64108 816 234-8000	<b>Memphis Area Office</b> 5100 Poplar Avenue Suite 1900 Memphis, TN 38137 901 685-1603	<b>New York Regional Office</b> 20 Exchange Place New York, NY 10005 917 320-2500	<b>San Francisco Regional Office</b> 25 Ecker Street Suite 2300 San Francisco, CA 94105 415 546-0160

For the names and telephone/fax numbers of key regional contacts see the FDIC Internet site at:  
[www.fdic.gov/about/contact/ask/regionaloffices.html](http://www.fdic.gov/about/contact/ask/regionaloffices.html).

# Appendix II

## *Other Community Development Investment Resources*

### **Guidance from the Office of the Comptroller of the Currency**

The OCC provides a number of publications and newsletters concerning community development investments. They may be obtained from:

**The Community Development Division  
Office of the Comptroller of the Currency  
250 E Street, SW  
Washington, DC 20219  
202 874-4930  
[www.occ.treas.gov/cdd/resource.htm](http://www.occ.treas.gov/cdd/resource.htm)**

The OCC publications include:

- **National Bank Community Development Investments** (annually 1994-2003)  
The 1994 directory and annual supplements provide brief summaries of OCC-authorized community development investments that national banks have made with their community partners. They also contain geographic listings of investments, as well as telephone numbers to call for additional information about the specific investments.
- **Effective Strategies for Community Development Finance/Community Development Resource Guide** (2000)  
This publication presents strategies that have helped banks engage effectively in community development finance. The companion resource

guide provides summaries of approximately 145 publications, videotapes, software applications, web sites, and other information resources from more than 60 organizations.

- **Community Developments** (newsletter)  
This free quarterly newsletter shares information on community and economic development issues, major federal initiatives, and regulatory policies approved by the OCC. It provides timely information about innovative national bank lending investing practices that are effective and beneficial to communities.
- **2002 Activities Permissible for A National Bank** (dated April, 2003)  
This publication by the OCC provides information on the investment activities that are part of, or incidental to, the business of banking, or are otherwise authorized for a national bank. The business of banking is an evolving concept and the permissible activities of national banks similarly evolve over time. Accordingly, the list in this publication is not all-inclusive. The publication may be obtained from:  
**The Office of the Comptroller of the Currency  
Washington DC 20219-0001  
202-874-5000  
[www.occ.treas.gov/corpapps/bankact.pdf](http://www.occ.treas.gov/corpapps/bankact.pdf)**

### Guidance from the Federal Reserve and the Office of Thrift Supervision

The Board of Governors for the Federal Reserve System (the federal regulator for bank holding companies and state-chartered banks that are members of the Federal Reserve System) and the Office of Thrift Supervision (the federal regulator for state and federal savings associations) have published additional guidance on community development. By analogy, these guides may be useful for state-chartered banks or community-based organizations working in cooperation with financial institutions not regulated by the FDIC. They provide an overview of the requirements and constraints applicable to financial institutions regulated by federal banking agencies other than the FDIC:

- **Community Development Investments and the Federal Reserve System**

This pamphlet provides guidance to bank holding companies and state-member banks about the formation of community development corporations and other uses of equity investments for community development. It also covers the Federal Reserve's policies, guidelines, and key issues to consider when investing-including the review process for proposed community development investment activities. It may be obtained from the community affairs staff at the 12 regional Federal Reserve Banks. The Federal Reserve's regulation governing

community development and public welfare investments for state-member banks may be found at 12 C.F.R. § 208.22 (see also 12 C.F.R. § 225.127 regarding bank holding company investment in corporations or projects designed primarily to promote the public welfare).

- **Community Development Investment Authority: A Guide to the Federal Laws and Regulations Governing Community Development Activities of Savings Associations, by the Office of Thrift Supervision** (dated December 1998, 2nd ed.)

This guide describes the federal laws and regulations governing community development activities by federal and state savings associations supervised by the OTS. It may be obtained from the OTS Internet site at [www.ots.treas.gov/docs/48079.pdf](http://www.ots.treas.gov/docs/48079.pdf)

### Guidance from the Federal Deposit Insurance Corporation

- **Activities Permissible for a National Bank**

To assist insured state non-member banks with compliance with § 24 of the FDI Act, the FDIC's website includes a convenient link to the OCC's list of permissible activities for national banks and - state law permitting - for state banks. To access the list from the FDIC's website, go to: [www.fdic.gov/regulations/laws/index.html](http://www.fdic.gov/regulations/laws/index.html)

### Other Resources

**U.S. Small Business Administration  
Investment Division Institutions**  
409 Third Street  
Washington, DC 20416  
[www.sba.gov/inv](http://www.sba.gov/inv)

**U.S. Department of the Treasury  
Community Development  
Financial Institutions Fund**  
601 15th Street, NW,  
Suite 200-South  
Washington, DC 20220  
[www.cdfifund.gov](http://www.cdfifund.gov)

**The National Association  
of Small Business Investment  
Companies (NASBIC)**  
666 11th Street, NW  
Suite 750  
Washington, DC 20001  
[www.nasbic.org](http://www.nasbic.org)

**Federal Deposit Insurance Corporation** . 550 17th Street, NW . Washington, DC 20429-9990

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