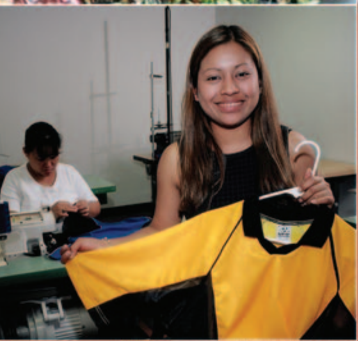
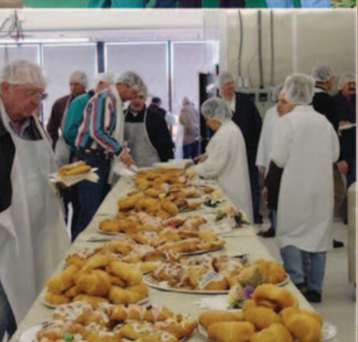
Comptroller of the Currency
Administrator of National Banks
US Department of the Treasury

# Community Developments *Investments*

Fall 2010

## Public Welfare Investments
## A Catalyst for Community Development

# A Look Inside …

*Barry Wides, Deputy Comptroller, Community Affairs, OCC*

Today, as the U.S. economy regains strength, banks are helping to revitalize and stabilize their local neighborhoods with investments that are mutually beneficial to banks and the communities they serve.

Banks are providing affordable housing and supporting small businesses and job growth. They are taking advantage of federal tax credits that support real estate development in low-income and other targeted communities. They are investing in community development financial institutions and funds. Even as they make these investments that help bring new life to troubled communities, banks are helping themselves by meeting their own Community Reinvestment Act (CRA) goals.

This issue of *Community Developments Investments* serves as a guide, or perhaps a refresher, to banks interested in making public welfare investments that support community development and help reduce the economic distress in the neighborhoods where they do business.

## *Evolution of Public Welfare Investing*

Nearly a half century ago, an Office of the Comptroller of the Currency (OCC) ruling ushered in a wave of local investing by national banks that, working in collaboration with their community partners, helped renew and rebuild struggling communities across the nation.

The change began in 1963, when the OCC issued a legal interpretation of the National Bank Act allowing national banks to make community development investments that promote the public welfare. OCC Interpretive Rule 7.7480 allowed national banks to "make reasonable contributions to local community agencies and groups to further the physical, economic, and social development of their communities."

In a way, the ruling was revolutionary because it gave banks the regulatory green light to invest in community revitalization. It also paved the way for banks to use a new tool – community development corporations – to collaborate with community groups for the good of their communities.

The ruling helped lay a foundation for the 1977 enactment of the CRA and stimulated the increase in national bank investments in public welfare and community development over the next several decades. In 1992, the public welfare investment authority was codified in statute. Originally national banks were authorized to make public welfare investments in an amount up to 10 percent of a bank's capital and surplus. This amount was raised to 15 percent in 2006.

The OCC's *Community Development Investments*, Winter 2004/2005 edition, highlights legal, regulatory, and operational issues that national banks should consider when forming a community development corporation (CDC). The newsletter includes several case studies that highlight the strategies used by small and large banks to promote economic development through their CDCs and a discussion of how CDCs are considered under the Community Reinvestment Act.


*www.occ.gov/static/community-affairs/community-developments-investments/winter04/index.html*

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This and previous editions are available on *www.occ.treas.gov/cdd/resource.htm.*

Arizona MultiBank CDC

**A group of national banks made investments in the Arizona MultiBank Community Development Corporation using public welfare investment authority.**

Using the public welfare investment authority, banks have helped their communities – while boosting their own bottom lines – by

- Creating affordable multifamily housing and supporting other residential and commercial real estate development,
- Providing equity for small business start-ups and expansion,
- Revitalizing or stabilizing government-designated development areas, and
- Strengthening communities' capacity to undertake and sustain key community development infrastructure and related projects.

Today, community development investing under the public welfare investment authority remains a flexible tool that enables banks to minimize risk by structuring investments that make the most of the public- and private-sector resources and expertise available within their service areas and at the state, regional, and national levels.

**Banks are providing affordable housing and supporting small businesses and job growth. They are taking advantage of federal tax credits that support real estate development in low-income and other targeted communities.**

The articles in this issue of *Community Developments Investments* highlight community development investing by banks, and, specifically, the common types of public welfare investments; compare the public welfare investment authority provisions with CRA; and explain the public welfare investment submission process, as well as documentation requirements for public welfare investments. For a summary of the requirements, see the Public Welfare Investments Quick Reference Guide at *www.occ.treas.gov/topics/community-affairs/resource-directories/public-welfare-investments/pt24quickref.pdf* and the Public Welfare Investments fact sheet at *www.occ.gov/static/community-affairs/fact-sheets/Part_24_CD_Investments_FS.pdf.*

We know you will find this issue of *Community Development Investments* helpful. For information on opportunities, investment structures, and the application process, visit the OCC's Web site at *www.occ.gov.* To learn more about the public welfare investments authority, go to our Web site, select the Community Affairs home page, and select Public Welfare Investments. We also encourage you to contact the District Community Affairs Officer in your area. Contact information is available at *www.occ.gov/topics/community-affairs/contacts.html.*

For current information on public welfare investments, we suggest you join the OCC Community Affairs News List Service by subscribing at *www.occ.treas.gov/subscribe/occ-email-list-service.html.* After registering, you will receive regular e-mail alerts on new welfare investments precedents; the latest quarterly investment compilations; and announcements on new interpretations, regulations, and policy changes. In addition, we will inform you about the release of new Community Affairs publications as they become available.

# Public Welfare Investment Authority Encourages Broad Array of Investment Activities

*Sharon Canavan, Community Relations Expert, OCC*

National banks are using their public welfare investment authority to invest capital in much-needed community and economic development and affordable housing projects. Banks are investing in affordable housing, community and economic development, small business ventures, historic preservation, and renewable energy projects.

This article provides an overview of the common types of public welfare investments made by banks in 2009. Many of those investments served a dual purpose because they helped communities and helped banks meet their Community Reinvestment Act (CRA) goals.

## *Low-Income Housing Tax Credit*

The federal Low-Income Housing Tax Credit (LIHTC) is the most popular type of public welfare investment. Created in 1986, LIHTC has helped to stimulate the production of nearly 2 million affordable-housing units. In 2009, national banks made LIHTC investments totaling almost $2 billion.

Typically, banks invest either in individual projects or in funds containing multiple projects that qualify for LIHTC. Some banks are involved in syndicating and selling interests in LIHTC funds and marketing such interests to other investors. Many of the projects involve nonprofit housing sponsors providing a range of social services.

In the past two decades, the OCC has approved investments in hundreds of LIHTC tax credit funds. Some funds are national; others are regional. Either way, investors typically target funds benefiting areas surrounding banks' CRA assessment areas. The OCC has posted a list of these projects on its Public Welfare Investments (12 CFR 24) Web page (*www.occ.gov/topics/community-affairs/resource-directories/public-welfare-investments/index-public-welfare-investments.html*) under an OCC compendium of National Bank Public Welfare Investments in Community and Economic Development Entities (1997 to 2010) at *www.occ.treas.gov/topics/community-affairs/resource-directories/public-welfare-investments/compendium-national-bank-part-24-investments.pdf.*

**Banks are investing in affordable housing, community and economic development, small business ventures, historic preservation, and renewable energy projects.**

For more information, check these resources:

- Tax Credit Resource Directory (*www.occ.gov/topics/community-affairs/resource-directories/tax-credits/index-tax-credits.html*)
- *Community Developments Insights,* February 2008, "Low-Income Housing Tax Credits: Affordable Housing Investment Opportunities for Banks" (*www.occ.gov/static/community-affairs/insights/2008-10a.pdf*)
- Article Archive–Low-Income Housing Tax Credits (*www.occ.treas.gov/topics/community-affairs/publications/article-archives/archive-low-income-housing-tax-credits.html*)

## *New Markets Tax Credits*

The New Markets Tax Credit (NMTC) program is designed to spur investment of private capital in distressed communities. The program, first approved as a public welfare investment in 2002, provides tax credits to taxpayers who make qualified equity investments in designated Community Development Entities (CDE).

Investors receive a credit of 39 percent of the investment in a CDE, claimed over a seven-year credit allowance period. Banks may invest in CDEs. Some banks have established their own CDEs to more fully take advantage of the NMTC program. In 2009, $6.5 billion in NMTCs was awarded.

In 2009, 13 banks or entities associated with banks received $770 million in new market tax credit allocations to

- Attract new industry and higher-paying jobs into rural areas.
- Provide community services, such as job training, child care centers, ambulatory health clinics, charter schools, theaters, and arts facilities.
- Make flexible loans and equity investments with attractive rates, terms, and conditions to support housing and economic development activities by community-based organizations, nonprofits, Community Development Corporations (CDC), and community development financial institutions (CDFI) that may not have access to traditional sources of capital. This also supports such activities as small business lending, rehabilitating blighted urban communities, and constructing urban retail, office, industrial, mixed-use, housing, and community development facility projects.

- Make equity investments that are combined with other investment tax credits in support of historic rehabilitation and solar energy projects.

Also, banks are significant investors in New Markets Tax Credit Funds and investments even when they do not participate directly by requesting a NMTC allocation. In 2009, the OCC approved more than $185 million in NMTC investments under the public welfare investment authority.

A list of recent NMTC awardees is available on the CDFI Fund Web site, *www.cdfifund.gov/what_we_do/programs_id.asp?programID=5*.

For more information, check these resources:

- Tax Credit Resource Directory (*www.occ.gov/topics/community-affairs/resource-directories/tax-credits/index-tax-credits.html*)
- *Community Developments Insights,* February 2007, "New Markets Tax Credits: Unlocking Investment Potential" (*www.occ.gov/static/community-affairs/insights/InsightsNMTC.pdf*)
- *Community Developments Investments,* Summer 2004, "New Markets Tax Credits: Bridging Financing Gaps" (*www.occ.gov/static/community-affairs/community-developments-investments/summer04/index.html*)
- Article Archive–New Markets Tax Credits (*www.occ.treas.gov/topics/community-affairs/publications/article-archives/archive-new-markets-tax-credits.html*)

## Bank Investments in CDCs and CDFIs

Many banks are using the public welfare investment authority to support CDCs or CDFIs that support housing or community and economic development.

Banks may make investments in and own stock in CDCs or CDFIs. Some banks pool their resources to finance community development activities through multibank CDCs. Other banks establish bank-owned CDCs. Banks can also use the public welfare investment authority to support CDFIs.

Union Bank of California

**Union Bank of California, using the public welfare investment authority, invested in the California Affordable Housing Fund 2001-I, a low-income housing tax credit fund investing in regional projects like this one for low- and moderate-income persons.**

**Many banks are using the public welfare investment authority to support CDCs or CDFIs that support housing or community and economic development.**

In 2009, national banks made 21 investments totaling more than $50 million in local CDCs and CDFIs that focused on affordable housing, community investment, and sustainable economic development in low- to-moderate income (LMI) areas.

Investments in CDFIs, certified by the U.S. Department of Treasury's Community Development Financial Institutions Fund, may be eligible for Bank Enterprise Awards (see CDFI Fund Web site at *www.cdfifund.gov/what_we_do/programs_id.asp?programID=5* for details).

In 2009, public welfare investments included housing-focused investments through CDCs. Some of these CDCs are intermediaries and use the monies to provide gap financing for projects they finance. Other CDCs are affordable housing developers who use the monies for predevelopment expenses and for project financing.

Other bank investments in CDCs and CDFIs were used to foster economic development for LMI individuals or areas. CDCs and CDFIs are often more familiar with local partners and can provide technical support and services that increase the success rate for small businesses. Once the businesses become more established, the owners often are referred to traditional bank partners for loans and other bank services.

In addition to their public welfare investments, banks often provide other resources to CDCs and CDFIs, such as office space, staffing, and equipment. Further, bank employees may serve on CDC and CDFI boards of directors and loan review committees.

For more information, check these resources:

- *Community Developments Fact Sheet,* "Bank-Owned Community Development Corporations" (*www.occ.gov/static/community-affairs/fact-sheets/bank-owned-community-development-corporations-fs.pdf*)
- *Community Developments Fact Sheet,* "Multi-Bank Partnerships for Community Development Financing" (*www.occ.gov/static/community-affairs/fact-sheets/multi-bank-partnerships-for-community-developments-financing-fs.pdf*)
- *Community Developments Investments,* Fall 2008, "Multi-Bank CDCs: Pooling Resources to Strengthen Communities" (*www.occ.gov/static/community-affairs/community-developments-investments/fall08/cde08fall_index.htm*)
- *Community Developments Investments,* Winter 2004/2005, "Growing Markets with Bank-Owned Community Development Corporations" (*www.occ.gov/static/community-affairs/community-developments-investments/winter04/index.html*)
- *Community Developments Investments,* Summer 2002, "Community Development Financial Institutions and CD Banks – Natural Partners for Traditional Lenders" (*www.occ.gov/static/community-affairs/community-developments-newsletter/cd_summer02.pdf*)
- Article Archive–Community Development Banks and Community Development Financial Institutions (*www.occ.gov/topics/community-affairs/publications/article-archives/archive-community-dev-financial-institutions.html*)
- Article Archive–Bank Community Development Corporations (*www.occ.gov/topics/community-affairs/publications/article-archives/archive-bank-community-dev-corp.html*)

Broadway National Bank

**Gini Garcia works on her hand-blown art glass using equipment she used as collateral in applying for a small business loan from acommunity development loan fund. The loan allowed her to improve her studio in a low-income community in San Antonio, Texas.**

## *Small Business Capital*

Under the public welfare investment authority, banks can make equity investments in qualifying funds that support small business. In 2009, public welfare investments specifically targeted to small businesses totaled nearly $20 million.

Banks using the public investment authority often invest in two types of small business funds:

- **Small Business Investment Company (SBIC):** The SBIC program is a public-private partnership administered by the U.S. Small Business Administration (SBA) to bridge the gap between entrepreneurs' need for capital and traditional financing sources.

In 2009, national banks invested more than $15 million in SBICs using the public welfare investment authority. (National banks may also use the authority under 15 USC 682(b) to make investments in SBICs of up to 5 percent of their capital and surplus.) The structure of the program is unique: SBICs are privately owned and managed investment funds that use their own venture capital plus funds borrowed with an SBA guarantee to make equity and debt investments in qualifying small businesses.

Typically, SBICs support small business start-ups and expansions by providing a combination of longer-term debt, equity investments, and management counseling. SBICs make investments in a broad range of industries, geographies, and stages of investment. Debenture SBICs focus primarily on providing debt or debt with equity features to small businesses that are mature enough to make current interest payments on the SBIC investment. The SBA licenses and regulates SBIC funds. For additional information about SBICs, read the article on Eligibility and Submission Requirements.[1]

- **Community Development Venture Capital (CDVC):** CDVC companies raise private funds and in many ways operate similar to an SBIC, but there is no SBA involvement. CDVC investments may be made by banks under the public welfare investment authority when the fund's investments directly or indirectly benefit low- or moderate-income communities and families by fulfilling the needs for housing, supplying vital services, growing businesses, or creating jobs.

  CDVCs provide equity financing in underserved communities, while at the same time offering market-rate financial returns for their investors. Often CDVC investments receive positive consideration in a bank's CRA examination. For example, community development venture capital companies that promote economic development by financing small businesses are qualified investments under CRA.

  A national bank that chooses to invest in any CDVC fund should secure assurances from the CDVC fund that its investments meet the public welfare investment authority guidelines.

For more information, check these resources:

- *Community Developments Investments,* Spring 2007, "Community Development Venture Capital: A Catalyst for Double Bottom-Line Results" (*www.occ.gov/static/community-affairs/community-developments-investments/cdvc-ezine2007/cd/index.html*)
- Article Archive–Community Development Venture Capital (*www.occ.gov/topics/community-affairs/publications/article-archives/archive-community-dev-venture-capital.html*)

## Historic Tax Credits

The Historic Tax Credit (HTC) program encourages the rehabilitation of certified historic buildings by providing a tax credit to property owners for 20 percent of the qualified renovation expenditures.

In 2009, the OCC approved more than $80 million in HTC investments that were made by national banks under public welfare investment authority. These HTC investments created affordable housing units or supported economic development benefiting LMI areas or government-targeted revitalization zones. HTC investments can be structured to take advantage of NMTC, as well.

**In 2008 and 2009, several investments in solar energy equipment using the Investment Tax Credit (ITC) program were approved under the public welfare investment authority.**

For more information, check these resources:

- Tax Credit Resource Directory (*www.occ.gov/topics/community-affairs/resource-directories/tax-credits/index-tax-credits.html*)
- *Community Developments Insights*, November 2008, "Historic Tax Credits: Bringing New Life to Older Communities" (*www.occ.gov/static/community-affairs/insights/Insights-HTC.pdf*)
- Article Archive–Historic Redevelopment (*www.occ.gov/topics/community-affairs/publications/article-archives/archive-historic-redevelopment.html*)

## Investment Tax Credit for Renewable Energy

In 2008 and 2009, several investments in solar energy equipment using the Investment Tax Credit (ITC) program were approved under the public welfare investment authority.

The ITC offers a tax credit of 30 percent of the eligible construction and equipment costs for building a solar energy facility. The basis for approving these investments under the public welfare investment authority was the benefit provided to LMI individuals from reduced energy costs and/or the economic benefit derived from the jobs created for the installation and ongoing maintenance of the solar energy facility.

In one instance, the solar equipment was placed on existing LIHTC multi-family developments. To enhance affordability, the bank created a "twinned" deal structure that used both the ITC and the NMTC. That deal also benefited from a grant award under a state program that encourages solar energy in affordable housing.

For more information, check these resources:

- *Community Developments Fact Sheet,* "Business Investment Tax Credit Program: Solar Energy Properties" (*www.occ.gov/static/community-affairs/fact-sheets/Solar_Energy_FS.pdf*)
- Community Development Investment Letter #2009-6 (*www.occ.gov/static/interpretations-and-precedents/feb10/cdil09-6.pdf*)
- Community Development Investment Letter #2009-1 (*www.occ.gov/static/interpretations-and-precedents/nov09/cdil09-1.pdf*)
- Community Development Investment Letter #2008-1 (*www.occ.gov/static/interpretations-and-precedents/aug08/cdil08-1.pdf*)

[1] See page 10

# Similarities, Differences Between CRA and Public Welfare Investment Authority

*Letty Ann Shapiro, Community Development Expert, OCC*

When planning and making community development investments, national banks must understand and comply with two regulations that share a common purpose but have somewhat differing criteria.

CRA and the public welfare investment authority share the same goal: Encouraging bank investments that benefit the public. Yet their provisions differ and can be confusing. This article explains the similarities and the differences in the regulations.

- **CRA** was enacted in 1977 to prevent redlining, a discriminatory practice of denying or limiting financial services in a specific area, and to encourage banks to help meet the credit needs of all segments of their communities, including low- and moderate-income neighborhoods. The CRA regulation (12 CFR 25) establishes the framework and criteria examiners use to assess the records that national banks compile as they strive to meet the credit needs of their communities and maintain safe and sound operations.
- **The public welfare investment authority (12 CFR 24)** gives national banks the legal authority to promote the public welfare by making community development investments that otherwise are not expressly permitted under the National Bank Act. With this authority, for example, banks can own real estate that serves the public welfare.

## *Similarities*

Some national banks make community development investments directly. Others make them indirectly, through community development corporations, tax credit funds, or in partnership with community-based organizations. Many investments leverage funding and services provided by local, state, or federal government agencies. Most of the public welfare investments made by banks may also qualify for CRA credit.

**CRA and the public welfare investment authority share the same goal: Encouraging bank investments that benefit the public.**

Bank investments under the public welfare authority must primarily benefit low- and moderate-income persons, low- and moderate-income areas, or other government-targeted redevelopment areas. In addition, an investment that would receive consideration under CRA as a "qualified investment" would also meet the public welfare requirements.

Public welfare investment authority gives banks the right to make debt and equity investments, including those that support affordable housing and other real estate development, provide equity for small business start-up and expansion, revitalize or stabilize government-designated areas, and supplement or enhance banks' traditional community development lending.

CRA-qualified investments have a similar goal. National banks receive positive consideration for making or purchasing investments that meet the definition of a "qualified investment" under the CRA regulation. These investments

- Provide affordable housing for low- and moderate-income persons,
- Promote economic development by financing small businesses or farms,
- Revitalize or stabilize low- and moderate-income areas, designated disaster areas, or distressed or under-served nonmetropolitan middle income geographies, and
- Provide community services targeted to low- and moderate-income persons.

The regulation provides CRA evaluations for small, intermediate-small, and large national banks.

- Small banks are usually evaluated under a test that focuses primarily on their lending performance. Small banks may also request review of their investment and service activities that help them meet their CRA objectives.
- Intermediate-small banks are evaluated under a lending test and a community development test.
- Large banks are evaluated under the lending, investment, and service tests.
- National banks with limited purpose and wholesale designations are evaluated under the community development test, which assesses the banks' community development lending, qualified investments, and community development services.

• National banks that operate under OCC-approved CRA strategic plans are evaluated according to the goals of these plans, which may include qualified investments.

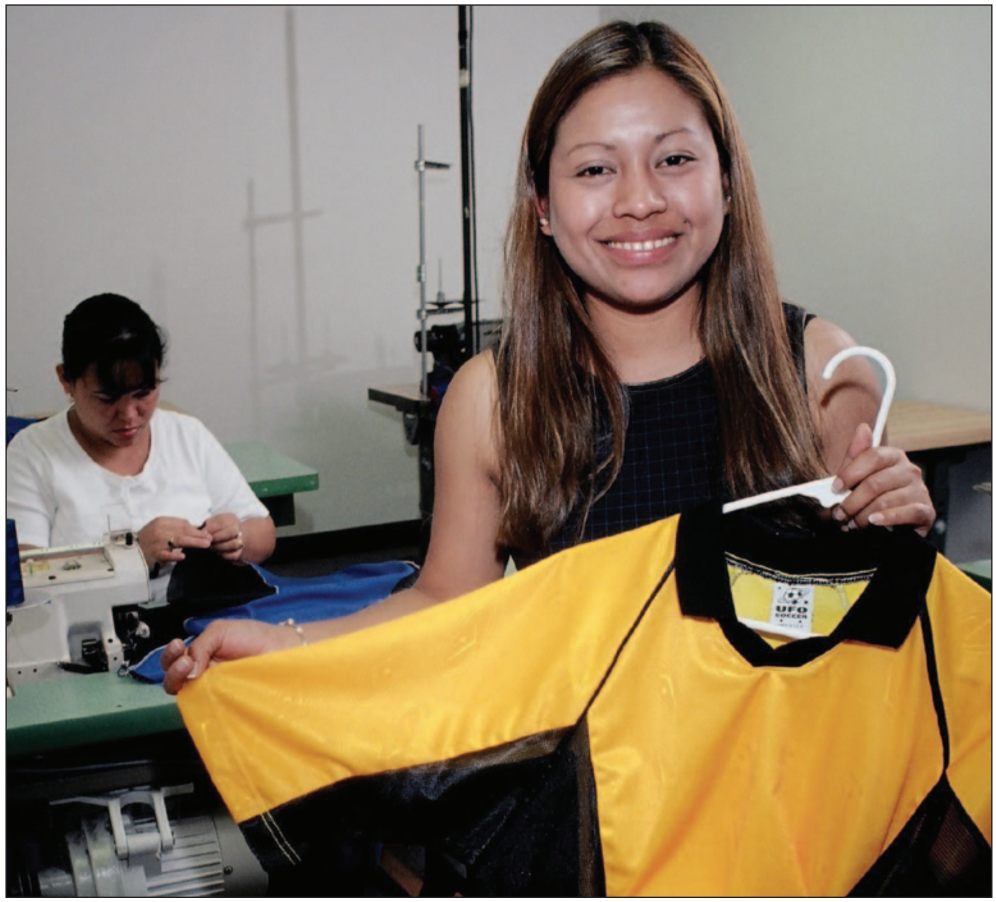
Public welfare investments that have been authorized according to the 12 CFR 24 guidelines can usually help banks meet their CRA obligations. In most instances, public welfare investments approved under public welfare authority also will meet the CRA definition of qualified investments.

## *Differences*

There are important differences between the regulations. CRA-qualified investments are subject to geographic limits and public welfare investments are not. The public welfare authority gives national banks the right to make community development investments within and outside their assessment areas.

In contrast, CRA-qualified investments must benefit banks' assessment area(s) or the broader statewide or regional areas that include the banks' assessment area(s). To meet this test, an investment must have the potential to benefit a bank's assessment area. For example, an investment in a statewide affordable housing fund that is designed to benefit a bank's assessment area would meet this geographical requirement.

In addition, a retail bank that has met the qualified investment needs of its assessment area also will receive CRA consideration for qualified investments within the broader statewide or regional area that includes the assessment area. The consideration will be made even if these qualified investments do not have the potential to benefit the assessment area. This broader statewide or regional area may be as small as a city or county, or as large as a multistate area. For example, the "mid-Atlantic states" may comprise a regional area. These broader statewide or regional investments provide the "icing on the cake" to enhance a bank's CRA performance.



ACCION Texas

**ACCION Texas provided a micro-loan to help finance Emilce Zapeta's soccer uniform company.**

**There are important differences between the regulations. CRA-qualified investments are subject to geographic limits and public welfare investments are not.**

A wholesale or limited-purpose bank has an even broader geographic limit for "icing on the cake" credit: the CRA-qualified investment can benefit an area anywhere outside of the assessment area, if the bank has otherwise adequately addressed the qualified investment needs of its assessment area.

Banks that want CRA consideration for public welfare investments should make sure that any investments purchased under the public welfare investment authority meet the regulatory definition of CRA-qualified investments, including geographic restrictions.

# Eligibility and Submission Requirements

*Karen Bellesi, Community Development Manager, OCC*

National banks interested in making investments under the public welfare investment authority (12 CFR 24) must comply with certain regulatory and public welfare standards and notify the OCC of their investment plans. This article outlines these standards, explains the OCC notification process, and provides links for further information.

The public welfare investment authority requires that a bank's investment must be designed primarily to promote the public welfare, such as by providing housing, services, or jobs.

Specifically, a national bank or national bank subsidiary may make an investment directly or indirectly 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 if the investment would receive consideration as a "qualified investment" under 12 CFR 25.23 of the CRA.

The specific public welfare investment standards and investment limits are outlined in 12 CFR 24.3. The regulation is available at the OCC's Public Welfare Investments (12 CFR 24) Web page at *www.occ.gov/topics/community-affairs/resource-directories/public-welfare-investments/index-public-welfare-investments.html.*

National banks use the public welfare investment authority to make investments in a variety of activities, such as creating affordable housing and supporting other residential and commercial real estate development, providing equity for small business start-ups and expansions, and revitalizing or stabilizing government-designated development areas.

Examples of activities permitted under the public welfare investment authority include (but are not limited to) those identified in 12 CFR 24.6.

National banks can make public welfare investments directly or indirectly through community and economic development entities (CEDE) that engage in eligible activities. Public welfare investments must be structured so they do not expose the banks to unlimited liability.

Examples are listed in 12 CFR 24.2(c). CEDEs may include (but are not limited to) subsidiary CDCs, multi-investor CDCs, limited partnerships and limited liability companies, CDFIs, and community development loan funds. Banks' investments should be structured so they do not expose the banks to unlimited liability.

## *Other Legal Authority Supporting Public Welfare Investments*

In certain cases, banks can make public welfare investments without using the public welfare investment authority and by using other legal authority. For example, a bank can purchase:

- Stock in a Small Business Investment Company (SBIC), a private investment supported by the Small Business Administration. This investment provides venture capital funds for small businesses and may be considered a qualified investment under CRA. The Small Business Investment Company Act of 1958 authorizes national banks to make investments in SBICs (15 USC 682(b)).
- Municipal or mortgage revenue bonds or mortgage-backed securities that specifically support affordable housing or other community development consistent with the requirements and limitations of 12 USC 24 (Seventh) and the OCC's implementing regulations of 12 CFR Part 1.

## *Dodd-Frank Wall Street Reform*

Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, sometimes referred to as the Volcker Rule, contains provisions limiting some types of private equity investments by national banks. These provisions explicitly exempt public welfare investments made by national banks under 12 USC 24 (Eleventh).

The statute provides that an exemption is not available if the public welfare investment would involve or result in a "material conflict of interest" between the bank and its clients, customers, or counterparties; would result, directly or indirectly, in a material exposure to "high-risk assets" or "high-risk trading strategies;" would pose a threat to the bank's safety or soundness; or would pose a threat to U.S. financial stability.

The OCC, Federal Deposit Insurance Corporation, and Federal Reserve Board will define the key terms in these standards, including material conflict of interest, high risk asset, and high risk trading strategy," In joint regulations to be issued 15 months after the enactment of Dodd-Frank, that is, in October 2011.

The provisions of the Volcker Rule become effective 12 months after the issuance of the agencies' implementing rules or two years after the statute's enactment, whichever is sooner. In the meantime, national banks' public welfare investment activity remains subject to the OCC's regulations at 12 CFR 24.

## *Getting OCC Approval for Public Welfare Investments*

A national bank seeking to make a public welfare investment may receive OCC approval in one of two ways: after-the-fact notification or by prior approval.

With either approach, the bank must complete the OCC's form, CD-1 *National Bank Community Development (Part 24) Investments,* which can be found at *www.occ.gov/tools-forms/tools/community-affairs/national-bank-part24-investments-pdf.pdf.* This is also available on the OCC's Public Welfare Investments (12 CFR 24) Web page at *www.occ.gov/topics/community-affairs/resource-directories/public-welfare-investments/index-public-welfare-investments.html.* National banks, with special authorization, may also submit these filings electronically through the OCC's BankNet Web site at *www.banknet.gov.*

**After-the-fact notification:** Banks eligible to provide after-the-fact notifications may make public welfare investments without prior OCC approval but 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 national bank is eligible to provide an after-the-fact notification if it meets the criteria outlined in 12 CFR 24.2(e):

- The bank is well capitalized,
- The bank has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System,
- The bank has a CRA rating of "outstanding" or "satisfactory," and
- The bank 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. If the bank is at least adequately capitalized and has a composite rating of at least 3 with improving trends, however, 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.

Calvert Social Investment Foundation/BRIDGE Housing Corporation

**Calvert Social Investment Foundation, an intermediary for bank investors wanting to make public welfare investments, invested in this environmentally friendly, cost-effective housing for seniors in California.**

As previously described, a bank's public welfare investment must meet the tests for qualifying public welfare investments (12 CFR 24.3) and investment limits (12 CFR 24.4). A bank may not provide an after-the-fact notification if any of the following apply:

- The banks' aggregate public welfare investments and outstanding commitments, including the proposed investment, exceed 5 percent of its capital and surplus. (Note: A bank whose aggregate public welfare investments exceed 5 percent of its capital and surplus may seek prior OCC approval to provide after-the-fact notifications for an amount up to 15 percent of capital and surplus.)
- 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 guidance is maintained on OCC's Web site at *www.occ.gov/topics/community-affairs/resource-directories/public-welfare-investments/investment-requiring-prior-approval-part24.pdf.*

Generally, for purposes of the after-the-fact notification process, a bank's public welfare investment should be consistent with the examples of qualifying public welfare investments found at 12 CFR 24.6. Further, the investment structure generally should be consistent with the list of examples of the types of CEDEs found at 12 CFR 24.2(c).

**Prior Approval:** If either the bank or the proposed public welfare investment does 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 specific investment. 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). Generally, the OCC provides a written decision to the bank within 30 days of the request. The OCC may extend the review period by notifying the bank.

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

**To submit a public welfare investment notification, banks should mail the CD-1 form to:**

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

The form may also be faxed to (202) 874-4652 or e-mailed to CommunityAffairs@occ.treas.gov.

National banks may also submit their public welfare investment filings electronically through BankNet. For more information about using BankNet for submitting public welfare investment authority applications, see OCC's *Community Developments Fact Sheet* "Public Welfare Investment Filings on E-Corp" at *www.occ.gov/static/community-affairs/fact-sheets/occ_ca_ecorp.pdf*.

## Where Can Banks Get Answers?

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 at *www.occ.gov/topics/community-affairs/resource-directories/public-welfare-investments/index-public-welfare-investments.html?submenuheader=0.* The site provides banks with a host of community development investment resources, including frequently asked questions and answers, letters describing precedent-setting uses of the public welfare investment authority (see Electronic Interpretations and Actions at *www.occ.gov/interp/monthly.htm*), an alphabetical list of funds that banks have invested in, examples of specific bank investments and other OCC policy materials. Also, read the "At-a-Glance" side bar (*www.occ.gov/static/community-affairs/community-developments-investments/fall10/articles/process/cde10fall04.htm#sidebar1glance*) to find annual lists of investments that were approved under the public welfare investment authority.

In addition, the OCC's District Community Affairs Officers, located in each OCC District, are available to provide assistance to banks with public welfare investment filings. A listing of Community Affairs Officers is provided at *www.occ.gov/topics/community-affairs/contacts.html.*

### National Bank Public Welfare Investments 'At-A-Glance' Charts

To learn about public welfare investments that national banks are making to support their communities, the OCC has compiled annual "At-A-Glance" charts, available at *www.occ.gov/topics/community-affairs/resource-directories/public-welfare-investments/index-public-welfare-investments.html?submenuheader=0#summaries.*

These charts illustrate public welfare investments that support activities including community development, economic development, finance, housing, and social services.

Each chart gives a snapshot of community development investments made across the country, presenting the most active national banks, their locations, projects receiving funding, the size and type of investments, and how the investments are structured.

In addition, the annual directories published between 1997 and 2002 provide thumbnail sketches of each investment made, including contact information and articles of interest. Each directory is available in a PDF and an Excel format.

### National Bank Public Welfare Investments, 1997 to March 2010

This compendium, created by the OCC, shows investment funds and entities in which national banks have invested using the public welfare investment authority is provided.

The list, available at *www.occ.gov/topics/community-affairs/resource-directories/public-welfare-investments/compendium-national-bank-part-24-investments.pdf*, covers bank investments between January 1997 and March 31, 2010.

### Guide to Community Development Precedent Letters

These investments have been noted as consistent with the public welfare investment authority and reflect precedent-setting actions that are consistent with the public welfare and other requirements of the regulation. This guide is available at *www.occ.gov/topics/community-affairs/resource-directories/public-welfare-investments/precedences.html.*

These investments illustrate innovative projects that promote community development because they:

- Are geographically located in low- and moderate-income areas or an area targeted by a governmental entity for redevelopment,
- Support low- and moderate-income jobs or services, or
- Are a "qualified investment" under 12 CFR 25.23 of the CRA.

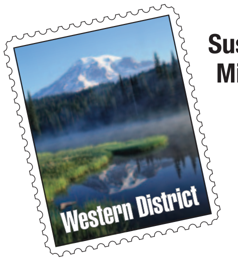
We encourage you to read about banks' investments that go beyond commonly used structures to achieve their goals and still satisfy the public welfare requirements of the public welfare investment authority.

### Common 12 CFR 24 Questions

Answers to common questions provide guidance on national bank investments using welfare investment authority. Information on the following topics may be found at *www.occ.gov/topics/community-affairs/resource-directories/public-welfare-investments/common-part-24-questions.html.*

- After-the-Fact Notification
- Calculating Aggregate Outstanding Investments When Determining Public Welfare Investment Limits
- Calculating Capital and Surplus When Determining Public Welfare Investment Limits
- Direct Versus Indirect Investments in CEDEs
- Formation of a National Bank Subsidiary CDC is available at *www.occ.gov/topics/community-affairs/resource-directories/public-welfare-investments/formation-of-subsidiary-cdc.html.*
- Government Targeted Areas
- Legal Authority for Community Development Investments
- Legal Authority for Investments in Subsidiary Community Development Entities and New Markets Tax Credits
- Maintaining Investment Files
- Minority- and Women-Owned Banks and Thrifts

# This Just In ... OCC's Four Districts Report on New Opportunities for Banks




**Susan Howard (818) 240-5175**
**Michael Martinez (720) 475-7670**

## Greater Phoenix Service Corps of Retired Executives

The Service Corps of Retired Executives (SCORE) has undergone changes to meet the needs of 21st century entrepreneurs.

SCORE is the technical assistance arm of the SBA. The organization is outreach-focused and approaches small business owners using current technology, training, and technical assistance tools that are essential for success in today's challenging business environment.

The Greater Phoenix SCORE, one of three chapters in Arizona, is a dynamic organization that operates throughout Maricopa and Pinal counties.

The organization offers counseling and low- or no-cost workshops for prospective and existing small business owners on topics ranging from banking education to web-based marketing and social media solutions.

The organization partners with the Arizona Department of Education, local businesses and governments, financial institutions, and other business and education organizations to provide services to the small business community. Counselors and workshop trainers come from business and government in addition to the traditional retired executive pool.

In existence since 2008, Greater Phoenix SCORE offers services at more than 20 locations. The program is seeing increased enrollment, up 200 percent from 2009 a reflection of the current economic climate.

Banks can participate in the program in a variety of ways, including offering marketing or financial support, or providing space for counseling and workshops.

For more information, e-mail Maryanne Weiss, Chairman of the Greater Phoenix SCORE program, at maryanne.weiss@scorephoenix.org.

## Transit-Oriented Development in Denver

In 2004, Denver voters approved a ballot initiative for FasTracks, a comprehensive mass transit system that expands the current system with 119 miles of rail lines and bus feeder routes. The expansion presents a unique opportunity for housing developers to build affordable housing along the transit routes.

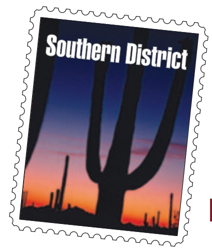
A partnership among Enterprise Community Partners, the city of Denver, and the Urban Land Conservancy was forged to develop affordable housing along the transit routes.

Because it can be cost-prohibitive to hold property for development while the transit system is completed, a $15 million transit-oriented development fund was created.

The fund is a unique approach to meshing urban planning with community development that allows affordable housing developers to buy and hold properties in transit corridors for a period of up to five years. The capital raised for the fund falls into four distinct categories: (1) equity, (2) first-loss funds, (3) unsecured second-loss funds, and (4) regular loan funds. The fund is expected to be operational for up to 10 years – to take advantage of the prime period for transit-oriented development – after which time funds will be returned to the initial investors.

If successful, the partnership will build more than 1,000 affordable homes.

For more information about the Fund and partnership, visit the Urban Land Conservancy Web site at *www.urbanlandc.org.*

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**Scarlett Duplechain (832) 325-6952**

## Florida Preservation Fund

The Florida Community Loan Fund is seeking banks to invest in the new Florida Preservation Fund to preserve affordable rental housing throughout Florida.

The Florida Preservation Fund is launching a pilot program in Orange, Palm Beach, and Pasco counties. Banks operating in any of these counties are invited to invest in the preservation fund. Additionally, the Florida Community Loan Fund can tailor investments to fit the CRA needs of individual banks.

The program will combine $4.8 million in support from the Florida Housing Finance Corporation with $20 million in debt from private investors to deploy up to $24.8 million in financing across the three counties.

The preservation fund will provide developers with access to lower-rate, short-term bridge loans for acquisition, stabilization rehabilitation, or limited predevelopment costs. The maximum loan size is $5 million with a fixed rate for a three-year term. All the work of the preservation fund must preserve long-term affordability.

To date, the preservation fund has secured $14.3 million in investments and commitments. The Florida Community Loan Fund is working closely with Florida banking institutions as well as other types of investors, including trade associations, religious institutions, and foundations to assemble the remaining balance needed to capitalize the preservation fund.

The Florida Community Loan Fund is a statewide community development financial institution, using financial capital and human creativity to transform lives and communities.

For more information, call Ignacio Esteban, Executive Director, or Rich Rollason, Development Officer, at (407) 246-0846.

## Southeast Mississippi Community Investment Corporation

The Southeast Mississippi Community Investment Corporation (SEMCIC) provides borrowers in Forrest, Lamar, and Perry counties a unique opportunity to obtain gap or direct financing.

SEMCIC is a nonprofit Mississippi corporation dedicated to creating and expanding businesses, supporting non-traditional business loan applicants, and developing job opportunities for low- and moderate-income individuals.

Established in 1993, SEMCIC is an initiative of the Area Development Partnership with funding from several local banks. In the last 17 years, the corporation has provided loans to diverse entities, including child care facilities, manufacturers, restaurants, retailers, tax services, and trucking companies.

Participating banks include BancorpSouth Bank, Great Southern National Bank, Hancock Bank, Regions Bank, and Trustmark National Bank.

Member banks partner with SEMCIC, which provides up to 50 percent of the total loan funds requested and takes a second lien position. Member banks are also granted a voting seat on the SEMCIC board of directors.

The SEMCIC assistance is a valuable tool for member banks to complete marginal deals for their institutions. SEMCIC is actively seeking additional loan capital to continue its efforts to build strong communities-one business at a time.

For more information, e-mail Annie McMillan at a.mcmillan@theADP.com or call (601) 296-7512.

## New Markets Tax Credit Allocation in Texas

The NMTC was designed to stimulate private investment and economic growth in low-income urban neighborhoods and rural communities. The program offers a seven-year, 39 percent federal tax credit for Qualified Equity Investments (QEI) made through CDE investment vehicles.

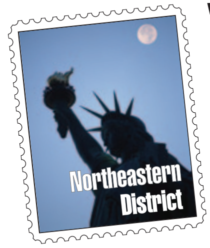
CDEs use capital derived from the tax credits to make loans to or investments in businesses and projects in low-income areas.

An allocation of $30 million was awarded to Pacesetter CDE in Richardson, Texas. Pacesetter CDE will use its NMTC allocation to provide subordinate small business financing in Texas.

Pacesetter CDE will invest primarily in businesses owned, controlled, and/or managed by women and minorities. These loans will have lower-than-market interest rates, substantial interest-only payment periods, longer-than-standard loan amortization periods, and no origination fees.

The program focuses on investments that increase the number of permanent jobs or the salaries of those jobs.

For more information, e-mail Giovanni Capriglione at giovanni@pacesettercapital.com or call (972) 725-0313.

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**Bonita Irving (617) 737-2528 x223**
**Denise Kirk-Murray (212) 790-4053**

## Project Restore™ Aims to Increase Successful Foreclosure Modifications

By some estimates, as many as 12 million homeowners are facing foreclosure in the next five years. To combat this trend, the National Foreclosure Mitigation Counseling Program and the Making Home Affordable Program, sponsors of Project Restore, are working to help troubled borrowers restructure their mortgage loans. Data collected by the OCC show the help is needed because more than half of homeowners who receive loan modifications will redefault within one year.

Those programs are also working with HomeFree-USA and the Mabuhay Alliance. HomeFree-USA is a leading U.S. Housing and Urban Development-approved homeownership preparation and foreclosure prevention counseling organization. The Mabuhay Alliance is a financial counseling agency primarily serving the Pan-Asian community. They are partnering with Project Restore™ in a program to increase the success rate on loan modifications.

The program offers a process to stabilize homeowners and improve their financial condition through a structured approach of managing debt, increasing savings, and improving credit status.

Project Restore combines high-touch coaching, behavior modification, financial discipline, and financial education with banking technologies that are already commonly used in the marketplace. Through automated bill-pay and other easy strategies, program participants can remain within their budget and pay their mortgage and other financial obligations on time.

Homeowners enrolled in Project Restore participate in one-on-one counseling with a financial development coach, behavior modification sessions, and financial education classes on debt management, budgeting and saving, credit repair, and homeownership.

Throughout the year-long program, the homeowner's situation is assessed, a budget is prepared, and a Financial Reconditioning Achievement Plan is developed.

Over the coming year, HomeFree-USA and the Mabuhay Alliance hope to work with financial institutions to enroll 1,200 families in Project Restore.

For additional information visit the HomeFree-USA Web site at *www.homefreeusa.org* or e-mail Marcia Griffin at marciaghfusa@msn.com or Faith Bautista at faith.mabuhayalliance@gmail.com.

## New Jersey Tax Credits Revitalize Neighborhoods

The New Jersey Neighborhood Revitalization Tax Credit Program provides the opportunity for banks and nonprofits to invest in New Jersey's communities.

This state tax credit program is designed to promote revitalization of the distressed neighborhoods across the state. The program is administered by the New Jersey Department of Community Affairs, Division of Community Resources.

Participating banks receive a 100 percent state tax credit for each dollar invested in the revitalization of low- and moderate-income neighborhoods in New Jersey. A bank can invest between $25,000 and $1 million a year for each project; the program encourages multiple-year commitments. The program is authorized to award up to $10 million annually.

The investment funds provided by banks are used by participating nonprofits for community development projects approved by the state community affairs department.

Projects may focus on affordable housing, economic development, workforce development, open space, social services, business assistance, and other activities that promote neighborhood revitalization. At least 60 percent of each project must support housing and economic development. To be eligible, a project must be located in an approved municipality.

To qualify for the program, a nonprofit organization must submit a comprehensive neighborhood plan to the state community affairs department for approval. Banks can either identify an approved nonprofit partner on their own or work with the department to be matched with a nonprofit whose projects have been approved by the department.

To find out more about the New Jersey Neighborhood Revitalization Tax Credit Program and the current list of eligible municipalities, visit the New Jersey Department of Community Affairs Web site at *www.nj.gov/dca/divisions/dhcr/offices/nrtc.html* or call (609) 633-6273.

## New Upstate New York Housing Tax Credit Fund

The Upstate New York Community Fund was created by the Great Lakes Capital Fund to enable banks and corporations to reduce their federal tax liability while supporting the development of affordable housing through LIHTC investments.

The fund specifically targets affordable housing development in the upstate New York region and will accept investments as low as $250,000.

Great Lakes Capital Fund is a nonprofit LIHTC syndicator supporting affordable housing development in Illinois, Indiana, Michigan, Wisconsin, and now New York through the creation of this new fund.

Since its inception, the company and its affiliates have invested more than $1.5 billion in housing and community development activities supporting 450 developments, 25,000 housing units, and 1 million square feet of commercial and community space.

For more information, e-mail Jim Logue at jlogue@capfund.net or call (517) 482-8555; or e-mail Dennis Quinn at dquinn@capfund.net or call (313) 841- 3751. You can also visit the Great Lakes Capital Fund Web site at *www.capfund.net.*


**Paul Ginger (312) 360-8876**
**Norma Polanco-Boyd (216) 274-1247 x274**

## Ohio Launches a New Market Tax Credits Program

Last fall, Ohio created its own state NMTC program to leverage federal NMTCs, encourage private investment in Ohio businesses, and spark revitalization in Ohio's communities.

Ohio's NMTC is similar to the federal NMTC in that the credits are structured over a number of years. The total tax credit value is 39 percent over seven years.

Tax credits will be awarded to CDEs that have federal tax credit allocations. The CDEs will then be required to invest the federal and state credits into Ohio businesses and projects.

As private markets have struggled, this type of program has become increasingly important for businesses needing access to capital. Investors will receive state credits in exchange for delivering below-market-rate investment options to Ohio businesses. To date, five other states have initiated similar programs to leverage federal NMTCs.

Ohio's Department of Development administers the program and began accepting applications during summer 2010. For more information, e-mail Mark Lundine at Mark.Lundine@development.ohio.gov or call (614) 644-6552.

## Partner for Community Development

Partners for the Common Good is a national nonprofit CDFI that participates in loans originated by for-profit and nonprofit CDFIs across the United States. The organization also can identify additional participants for loans.

Partners for the Common Good manages a $20 million capital pool provided by several dozen investors, including banks, religious organizations, and health care institutions, foundations, and the CDFI Fund of the U.S. Department of the Treasury.

By functioning as a wholesale lending network and helping other CDFIs manage liquidity, loan limits, and concentration risks, Partners for the Common Good provides an innovative service to the CDFI industry. The organization also enables its investors to direct their capital to organizations serving communities left out of the economic mainstream.

Since 2002, Partners for the Common Good has made 85 loans totaling $22 million. Approximately two-thirds of the loans in which the organization has participated are for affordable housing or community facilities in low- and moderate-income communities in the United States.

Most of the remaining loans have gone to domestic mission-driven enterprises and nonprofits for working capital, commercial development projects, and other purposes. Banks seeking CRA consideration for their investments can restrict where Partners for the Common Good uses its capital.

Banks can refer prospective borrowers that do not meet conventional credit criteria to Partners for the Common Good, which can then find investors to participate in that financing structure or identify grants needed to facilitate the transaction.

For more information, visit the Partners for the Common Good Web site at *www.pcgloanfund.org*, e-mail Chief Executive Officer Jeannine Jacokes at jacokes@pcgloanfund.org, or call (202) 689-8935.

Comptroller of the Currency
Administrator of National Banks

US Department of the Treasury

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# What's Inside