Office of the Comptroller of the Currency

Community Developments FACT SHEET

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Public Welfare Investments for Federal Savings Associations

Community Developments Fact Sheets are designed to share information about programs and initiatives of bankers and community development practitioners. These fact sheets differ from OCC bulletins and regulations in that they do not reflect agency policy and should not be considered regulatory or supervisory guidance. Some of the information used in the preparation of this fact sheet was obtained from publicly available sources. These sources are considered reliable and current, as of August 2024, but the use of this information does not constitute an endorsement of its accuracy by the OCC.

This *Community Developments Fact Sheet* explains public welfare investment authorities for federal savings associations (FSA).[1]

Overview

In addition to their general lending and investment authorities, FSAs may make community development loans, equity investments in real estate to further community development, investments in service corporations,[2] and other community development investments of the type permitted for a national bank under 12 CFR 24 (collectively, public welfare investments).[3] FSAs may make public welfare investments pursuant to the following three authorities, subject to certain limitations:

- 12 CFR 160.36, "De Minimis Investments"
- Section 5(c)(3)(A) of the Home Owners' Loan Act (HOLA) (12 USC 1464(c)(3)(A)), "Community Development Investments," as implemented by 12 CFR 160.30
- 12 CFR 5.59(f)(8), "Community Development Investments"

If an investment can be made under more than one authority, an FSA may designate

[1] Consistent with 12 CFR 101, an FSA that has elected to operate as a covered savings association is treated as a national bank for purposes of public welfare investments. Covered savings associations are subject to the requirements of 12 CFR 24, including the same authorization, terms, submission requirements, and conditions (including the limits on the total amount of such investments) as national banks. Covered savings associations should refer to the OCC *Community Developments Fact Sheet* on public welfare investments for national banks. An FSA with $20 billion or less in total consolidated assets, reported on the FSA's call report as of December 31, 2017, may elect national bank powers and operate as a covered savings association. Refer to 12 CFR 101 and OCC Bulletin 2019-31, "Covered Savings Associations Implementation: Covered Savings Associations."

[2] Refer to 12 USC 1464(c)(4)(B) for the definition of "service corporation."

[3] Refer to the *Community Developments Fact Sheet* on public welfare investments for national banks, which also applies to covered savings associations.

under which authority the investment was or will be made.

Regardless of the authority used to make a public welfare investment, an FSA must maintain complete and accurate records of its business transactions.[4]

De Minimis Investments Under 12 CFR 160.36

An FSA may invest, in the aggregate, up to the greater of 1 percent of total capital or $250,000 in community development investments of the type permitted for a national bank under 12 CFR 24.

Pursuant to 12 CFR 24, national banks may invest, directly or indirectly, in community and economic development entities, community development projects, and other public welfare investments if the investment meets the public welfare beneficiary standards of 12 CFR 24.3. Under 12 CFR 24.3, the OCC considers a national bank or national bank subsidiary investment to be a public welfare investment if

- the investment primarily benefits low- and moderate-income (LMI) individuals, LMI areas, or other areas targeted by a governmental entity for redevelopment, or
- the investment would receive consideration under 12 CFR 25.23 as a "qualified investment" for purposes of the Community Reinvestment Act.

Examples of eligible investments include those that support affordable housing and other permitted real estate development for community development, provide equity for start-up and small business expansion, or revitalize or stabilize a government-designated area.[5]

An FSA using the de minimis investment authority to make an investment of the type that is permitted for a national bank under 12 CFR 24 generally does not need to provide notice to the OCC.

Community Development–Related Equity Investments in Real Estate Under Section 5(c)(3)(A) of the HOLA (as implemented by 12 CFR 160.30

Under section 5(c)(3)(A) of the HOLA, an FSA may make investments in real property and obligations secured by liens on real property located in areas "receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974." To be permissible for investment, the real estate must be located within a geographic area or neighborhood that receives assistance under or is covered by, for example, the U.S. Department of Housing and Urban Development's Community Development Block Grant Program.[6]

Under 12 CFR 160.30, which covers the general lending and investment powers of FSAs, an FSA's aggregate community development loans and equity investments may not exceed 5 percent of its total assets. Within that limitation, an FSA's aggregate equity investments may not exceed 2 percent of its total assets.

In addition, a community development investment consistent with section

[4] Refer to 12 CFR 163.170(c).

[5] Refer to 12 CFR 24.6.

[6] Refer to 12 USC 1464(c)(3)(A).

5(c)(3)(A) of the HOLA must comply with the following standards:[7]

1. The investment must be located in a Community Development Block Grant entitlement community, a nonentitlement community that has not been specifically excluded by the state in its statewide submission for a Community Development Block Grant, or an area that participates in the Community Development Block Grant State Program.
2. The investment must be made in a residential housing project that benefits LMI individuals. The OCC generally considers an investment that benefits LMI individuals to mean that more than 50 percent of residential housing units are reserved for occupancy by LMI individuals or families.
3. The investment must be safe and sound. Whether an investment is safe and sound depends on the relevant facts and circumstances regarding the business transaction. For example, the OCC does not consider an investment that exposes an FSA to unlimited liability to be safe and sound.[8]
4. The FSA's investment may not exceed the FSA's loan-to-one-borrower limit.[9]
5. The FSA must qualify as an eligible savings association pursuant to 12 CFR 5.3(g).[10]
6. The investment must conform to all applicable laws, including the 2 percent aggregate investments cap for all equity investments by the FSA under HOLA section 5(c)(3)(A).

Generally, if an FSA's investment meets all six of these standards, the FSA would not need to provide notice to the OCC. The FSA

[7] These standards are described in an opinion letter (dated May 10, 1995) issued by the Chief Counsel of the former Office of Thrift Supervision (OTS), (OTS opinion letter). (The OTS merged with the OCC on July 21, 2011.) The OTS opinion letter continues to apply to FSAs, with the following modifications based on application of law. First, at the time of the OTS opinion letter, the applicable statutory reference was section 5(c)(3)(B) of the HOLA. Subsequently, the statutory citation was changed to section 5(c)(3)(A) of the HOLA. Therefore, the OTS opinion letter should be read to incorporate this citation change. Second, the OTS opinion letter included a standard that required an investing association that does not qualify for "expedited treatment" to provide notice to the appropriate "OTS Regional Director" before making the investment. In 2015 the OCC integrated OTS regulations with OCC regulations to conform applicable rules and procedures for processing filings related to the corporate activities and transactions of national banks and FSAs. As part of this integration, the concept of "expedited treatment" was replaced by the concept of an "eligible savings association," as defined in 12 CFR 5.3(g). Under 12 CFR 5.13, an eligible savings association may receive expedited review of its filings. Accordingly, the OTS opinion letter should be read to incorporate the eligible savings association standard. Third, the reference to "OTS Regional Director" should be replaced with the OCC's Community Affairs Division.

[8] This is consistent with the OCC's position that a national bank's public welfare investments should be structured in a manner that does not expose the bank to unlimited liability under 12 CFR 24.4(b).

[9] Refer to 12 CFR 32.

[10] Under 12 CFR 5.3, an "eligible savings association" is an FSA that (1) is well capitalized under 12 CFR 5.3; (2) has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System; (3) has a Community Reinvestment Act rating of outstanding or satisfactory, if applicable; (4) has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System; and (5) is not subject to a cease-and-desist order, consent order, formal written agreement, or prompt corrective action directive, or if subject to any such order, agreement, or directive, is informed in writing by the OCC that the bank or savings association may be treated as an "eligible bank or eligible savings association" for purposes of 12 CFR 5.

must be able to demonstrate to the OCC that the investment complies with these standards.[11]

If an FSA wishes to make a community development investment consistent with the spirit and intent of HOLA section 5(c)(3)(A) but the investment does not meet all six of these standards, the FSA may seek a case-by-case review by the OCC's Community Affairs Division before making the investment.[12]

Investments in Service Corporations and Service Corporation Subsidiaries for Community Development Investments Under 12 CFR 5.59

Under the authority of 12 USC 1464(c)(2)(4)(B) and 12 CFR 5.59, an FSA may make investments in service corporations and service corporation subsidiaries that engage in community development activities. Specifically, pursuant to 12 CFR 5.59(f)(8), the FSA may, through one or more service corporations, make investments in community and economic development or public welfare investments that are permissible under 12 CFR 24, as long as applicable filing requirements are satisfied.

An FSA may invest up to 3 percent of its assets in service corporations. Any amount exceeding 2 percent must, however, serve "primarily community, inner-city, or community development purposes."[13]

An FSA's direct investment in a service corporation is subject to geographic and ownership restrictions. Under 12 CFR 5.59(e)(2), a first-tier service corporation must be organized under the laws of the state in which the FSA's home office is located. In addition, under 12 CFR 5.59(e)(1), only federal or state-chartered savings associations with home offices in the state where the investing savings association has its home office may have an ownership interest in the service corporation. These requirements apply only to first-tier service corporations. A service corporation may own a lower-tier service corporation that is chartered in another state or that has non-FSA investors, including national banks.

Under 12 USC 1828(m) and 12 CFR 5.59(h), an FSA generally must submit an application with the OCC's Licensing Division before acquiring or establishing a new service corporation or commencing a new activity in an existing service corporation subsidiary.[14] All filings must be made in accordance with the filing requirements outlined under 12 CFR 5.59(h). In describing the public welfare investment for purposes of notices to the OCC, an FSA should include a complete description of the investment and

[11] Refer to page 6 of the OTS opinion letter, supra note 7. Under 12 CFR 163.170(c), an FSA is required to maintain complete and accurate records of all its business transactions.

[12] Refer to page 3 of the OTS opinion letter.

[13] Refer to 12 CFR 5.59(g)(1).

[14] The regulation requires an FSA to file a service corporation application when such a filing is required by 12 USC 1828(m). The statute requires a filing when an FSA establishes or acquires a subsidiary or when an FSA elects to conduct any new activity through a subsidiary it controls. The statute further provides that the filing requirement does not, however, apply to any FSA that was (1) chartered before October 15, 1982, as a savings bank under state law, or (2) a savings association that acquired its principal assets from an institution that was chartered before October 15, 1982, as a savings bank under state law. In addition, the filing requirement under 12 USC 1828(m) does not apply when an FSA proposes to establish or acquire an insured depository institution.

types of planned community development activities in which the service corporation will engage.

Tax Equity Finance Transactions

FSA public welfare investments may include tax equity finance transactions made pursuant to the public welfare investment requirements and procedures outlined in 12 CFR 160.30 and 12 CFR 160.36. In addition, an FSA may engage in a tax equity finance transaction pursuant to 12 USC 1464 only if the transaction is the functional equivalent of a loan[15] and the transaction satisfies the conditions of 12 CFR 7.1025(d).

The authority to engage in tax equity finance transactions under 12 CFR 7.1025 is separate from and does not limit other investment authorities available to FSAs.

This authority does not limit public welfare investments made pursuant to 12 USC 1464(c) and 12 CFR 160.30 and 160.36.

FSAs must provide written notification to the appropriate OCC supervisory office before engaging in each tax equity finance transaction.[16] For more information, refer to OCC Bulletin 2021-15, "Commercial Lending: Tax Equity Finance Transactions Pursuant to 12 CFR 7.1025."

For More Information

OCC Resources

- Public Welfare Investment Resource Directory, Federal Savings Associations
- *Community Development Fact Sheet* on public welfare investments for national banks
- Community Affairs Contacts

[15] A tax equity finance transaction is the functional equivalent of a loan if it meets the requirements of 12 CFR 7.1025(c).

[16] Refer to 12 CFR 7.1025(d)(3).