

# Legal Authority for National Bank Investments in Subsidiary Community Development Entities and NMTCs

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The OCC determined, in the 2003 revisions to 12 CFR 24 (Part 24), that a national bank investment in a new markets tax credit community development entity qualifies as a public welfare investment. Since then, several national banks have asked whether all investments in community development entities (CDE) must use the Part 24 investment authority and be subject to the capital and surplus requirements. The short answer is: No. Below are some questions and guidance to help you better determine when a bank can use another authority.

## **If a CDE limits its activities to making loans, can a national bank invest in a CDE pursuant to other legal authority?**

Yes. A national bank may invest in a CDE either as an operating subsidiary or as a non-controlling equity investment if the requirements in [12 CFR 5.34](#) or [5.36](#), respectively, are satisfied. Such investments would not be subject to the limitations of Part 24.

## **What exactly is an operating subsidiary?**

An operating subsidiary is a separate corporation, LLC, or similar entity, in which a national bank maintains more than a 50 percent voting or similar type of controlling interest, or otherwise controls the subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest of the subsidiary. An operating subsidiary may engage in activities that are part of, or incidental to, the business of banking, including the making of loans or other extensions of credit. Operating subsidiaries are governed by 12 CFR 5.34.

## **Must a bank submit an application or notice to the OCC to establish an operating subsidiary?**

Yes, a bank that intends to acquire or establish an operating subsidiary usually must submit an application or notice to the OCC. Well-capitalized and well-managed banks may file under the notice process for the acquisition or establishment of an operating subsidiary that will engage in only "eligible activities." The eligible activities, which are listed in 12 CFR 5.34(e)(5)(v), include making loans or other extensions of credit. If a bank is not well-capitalized and well-managed (or if the proposed activities are not eligible activities), the bank must follow the standard application process for all activities. See "Investment in Subsidiaries and Equities," *Comptroller's Licensing Manual*, for detailed guidance on the operating subsidiary filing procedures.

## **Pursuant to Part 5, may a national bank own, either directly or through an operating subsidiary, a non-controlling interest in a CDE that engages only in eligible activities?**

Yes, the OCC permits national banks to own, either directly or through an operating subsidiary, a non-controlling interest in such a CDE. The CDE may be a corporation, limited partnership, LLC, or similar entity. Twelve CFR 5.36 provides a notice procedure for well-capitalized and well-managed banks to make certain types of non-controlling investments, including non-controlling investments in entities engaged in the eligible activities listed in 12 CFR 5.34(e)(5)(v). For further details on the information that must be included in a non-controlling investment notice, see 12 CFR 5.36.

[http://www.occ.gov/cdd/legal\\_authority.html](http://www.occ.gov/cdd/legal_authority.html)