

# Publications

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## OCC Proposes to Modify Public Welfare Investment Authority, Prompting Closer Focus on Investment Rationale

### Key Takeaways

- The OCC has proposed to remove references to “minority- and women-owned entities” from PWI authority to align with statutory language.
- PWI authority provides banks with various opportunities to partner with non-bank companies to invest in new projects, such as workforce housing, conversion of underutilized properties into useful projects, low-income housing and solar energy tax credits.
- Banks should review current and proposed PWI activities to ensure they are clearly tied to public welfare and community development objectives and be prepared to revisit how those investments are framed and documented if the rule is finalized.

The OCC has proposed changes to its public welfare investment (PWI) rule under 12 C.F.R. Part 24 that would remove explicit references to minority- and women-owned entities, raising immediate questions for banks that rely on the framework. The April 24, 2026 notice of proposed rulemaking (NPRM) signals a shift in how the agency frames qualifying investments but is not expected to limit banks’ ability to support those entities where broader public welfare criteria are met. In this alert, we outline the proposed change and what it may mean for banks evaluating qualifying investments.

### How Public Welfare Investment Authority Works

The regulation authorizes national banks and their subsidiaries to make investments “designed primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities (such as through the provision of housing, services, or jobs),” subject to certain percentage of capital limitations. PWI allows national banks to engage in a variety of investments that help to finance community development activities and provide capital for affordable housing, small business development and other community needs.

Under the OCC’s implementing regulations, a PWI is an investment made directly or indirectly by a national bank or its subsidiary that primarily benefits low- and moderate-income (LMI) individuals, LMI areas or other areas targeted by a governmental entity for

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redevelopment, or an investment that would receive consideration as a “qualified investment” under the investment test in the Community Reinvestment Act’s implementing regulations. Examples of PWIs that benefit LMI areas and individuals currently include certain investments in small businesses and small farms, including minority- and women-owned small businesses and small farms, and minority- and women-owned depository institutions.

### **What the Removal of MWBE References Means in Practice**

The OCC’s NPRM proposes to amend the regulation to remove reference to minority- and women-owned entities, purportedly making it more consistent with the statutory language. However, the OCC noted that the amendment “would generally permit national banks and their subsidiaries to continue to make PWIs to the same extent as currently permitted.” Consequently, the OCC’s proposal should not prevent national banks from continuing to engage in PWI activities that benefit minority- and women-owned entities, provided that the proposed investments also primarily promote the public welfare generally. OCC precedent and regulatory history provide multiple avenues to arrive at a favorable public welfare benefit determination.

### **Key Timing and Comment Considerations**

The OCC will accept public comments on the proposal up to 30 days after the NPRM is published in the Federal Register. As the agency signals continued flexibility alongside closer scrutiny, institutions should be prepared to engage with the OCC where uncertainty exists and consider submitting comments within the 30-day window.

### **Bottom Line for Banks Considering Public Welfare Investments**

The OCC’s proposal reframes, but does not fundamentally narrow, the scope of permissible public welfare investments. Under some circumstances, OCC regulations authorize national banks to make public welfare investments without prior OCC approval, while they must seek prior approval in others. In cases where there is some uncertainty as to whether a proposed investment falls under PWI authority, national banks may seek prior OCC non-objection to the investment.

In either case, banks should focus on clearly documenting how proposed investments primarily promote public welfare, particularly where benefits to minority- and women-owned entities are part of a broader qualifying purpose.

For questions about how the proposed rule may affect public welfare investment strategies or specific transactions, contact Travis Nelson or your regular Polsinelli attorney.