



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #672
July 1995
12 U.S.C. 2901

June 29, 1995

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Dear []:

This letter responds to your request for an opinion that national banks would receive favorable consideration under the new regulations implementing the Community Reinvestment Act ("CRA"), 12 U.S.C. §§ 2901 *et seq.*, for investments in the stock of a company that originates and participates in loans to finance the construction, development and rehabilitation of affordable housing units for occupancy by low-to-moderate income families ("the Company"). As discussed below, based on the information you provided, it appears that a national bank's lawful investment¹ in the Company would receive favorable consideration under the new CRA regulations as a "qualified investment."

As you know, the OCC, the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, "the agencies") recently published in the Federal Register new regulations implementing the CRA. See 60 FED. REG. 22156 (May 4, 1995). The new regulations provide different assessment methods for different classes of institutions. Large retail institutions are assessed primarily based on their performance under three tests: a lending test, an investment test, and a service test. Wholesale and limited purposed banks may elect to be assessed under a community development test. Small institutions are generally assessed under a streamlined method. Finally, any institution can elect to be evaluated based on a strategic plan, developed with

¹ The scope of this letter is limited to whether investments by national banks in the stock of the Company would receive favorable consideration under the new CRA regulations. This letter does not address whether a national bank may lawfully invest in the stock of the Company. Please note that the authority of national banks to make equity investments is limited. See 12 U.S.C. § 24 (Seventh) & (Eleventh); 12 C.F.R. Parts 1 & 24. Furthermore, the OCC does not endorse particular investment opportunities offered to national banks.

community input and approved by the institution's primary regulator. *See generally id.* at 22180 (to be codified at 12 C.F.R. § 25.21).

The new regulations provide that a bank generally will be rated, in part, based on its record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s). *See* 60 FED. REG. 22181 (to be codified at 12 C.F.R. § 25.23). In addition, for wholesale and limited purpose banks, the OCC will consider qualified investments that benefit areas outside the bank's assessment area(s) if the bank has adequately addressed the needs of its assessment area(s). *See id.* at 22182 (to be codified at 12 C.F.R. § 25.25(e)). A bank that is approved for evaluation based on its performance under a strategic plan will receive favorable consideration for qualified investments that benefit its assessment area(s) only if the investments were included within the measurable goals for the plan. *See generally id.* at 22182-83 (to be codified at 12 C.F.R. § 25.26). Finally, small banks will generally be evaluated under a streamlined method that does not require qualified investments for satisfactory performance. However, qualified investments that benefit the bank's assessment area(s) would be considered favorably under the streamlined method. *See id.* at 22182 (to be codified at 12 C.F.R. § 25.26(a)(1)); *id.* at 22188 (to be codified as Appendix A(d)).

"Qualified investment" is defined as "a lawful investment, deposit, membership share, or grant that has as its primary purpose community development." 60 FED. REG. 22180 (to be codified at 12 C.F.R. § 25.12(s)). "Community development" is further defined as:

- (1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;
- (2) Community services targeted to low- or moderate-income individuals;
- (3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of 13 CFR 121.802(a)(2) or have gross annual revenues of \$1 million or less; or
- (4) Activities that revitalize or stabilize low- or moderate-income geographies.

Id. at 22179 (to be codified at 12 C.F.R. § 25.12(h)). The concept of "primary purpose" is not further defined; however, it would commonly be understood to mean that the main purpose of the investment activity is community development.

The regulations define "low-income" as "an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a

geography." 60 FED. REG. 22179 (to be codified at 12 C.F.R. § 25.12(n)). "Moderate-income" is defined as "an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography." *Id.*

The draft Private Placement Memorandum of the Company states that its sole business will be:

[T]o seek to identify, originate and otherwise participate in the construction and development of new and rehabilitated "Affordable Housing" units for occupancy by low-to-moderate income families as both tenants as well as immediate or future owners. The sole business of the Company will be to originate and/or participate in providing first and/or subordinate construction and medium term loans (not exceeding five (5) years in duration) both to "for profit" as well as "not-for-profit" constructors, rehabilitators and/or developers of Affordable Housing units.

Private Placement Memorandum at 8.

"Affordable Housing" is generally defined in the Private Placement Memorandum as:

[P]rimary residential housing for occupancy by persons and families not earning in excess of 80% of Median Income for a given geographic area as determined by the U.S. Census, although some subsidized and unsubsidized U.S. and State financing programs define such term differently for different loan and program purposes. The Company may also participate in such loans, but at no time will low and moderate income borrowers comprise less than 51% of any one project undertaken by the Company.

Private Placement Memorandum at 8-9.

Based on this information, assuming the Company operates as described in the Private Placement Memorandum, it appears that a lawful equity investment in the Company would be considered a qualified investment. The investment would have as its primary purpose community development because at least 51 percent of the housing financed would be affordable to low- or moderate-income individuals.

I trust this letter is responsive to your inquiry. If I can be of further assistance, please feel free to contact me or Margaret Hesse, an attorney on my staff, at 202-874-5750.

Sincerely,

/s/

Matthew Roberts
Director
Community and Consumer Law Division