
**Office of the Comptroller of the Currency
Federal Deposit Insurance Corporation
Federal Reserve Board
Office of Thrift Supervision**

10 June 1997

**Intepretive Letter #787
July 1997
12 U.S.C. 2901**

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Dear []:

This letter responds to your correspondence dated May 9, 1997, in which you inquired about the applicability of the Community Reinvestment Act (CRA) regulations to a financial institution's investment in a national equity fund that invests in Low Income Housing Tax Credit projects. Specifically, you asked whether a financial institution would receive consideration under the CRA regulations only if it invested directly in the project, rather than indirectly through an equity fund such as the [] Corporation. For the reasons discussed below, a qualified investment under the CRA regulations includes both "direct" and "indirect" investments by a financial institution.

The CRA regulations provide a detailed framework for evaluating an institution's CRA performance. The regulations set out a number of different evaluation methods for examiners to use, depending on the business strategy and size of the institution under examination. The CRA regulations clearly permit consideration of investments in organizations that make qualified investments.¹ The CRA regulations define a "qualified

¹ See 60 Fed. Reg. 22,156, 22,161 (May 4, 1995). Examiners typically evaluate a large institution's CRA performance under the lending, investment and service tests. Examiners consider a large institution's qualified investments under the investment test. See 12 C.F.R. §§ 25.23(a), 228.23(a), 345.23(a), and 563e.23(a). In a small institution examination, examiners may adjust an institution's evaluation under the small institution performance criteria, if appropriate, based on lending-related qualified investments. See 12 C.F.R. §§ 25.26(a)(1), 228.26(a)(1), 345.26(a)(1), and 563e.26(a)(1); see also Qs and As, 61 Fed. Reg. 54,647, 54,658 (Oct. 21,1996) (Q and A 1 addressing § __.26(a) (consideration of small institutions' lending-related activities)). Examiners may also consider qualified investments to determine if a small institution merits an outstanding CRA rating. See 12 C.F.R. pt. 25 app. A(d)(2), pt. 228 app. A(d)(2), pt. 345 app. A(d)(2), and pt. 563e app. A(d)(2); see also *id.* at 54,659 (Q and A 5 addressing § __.26(a)). The community development test, which is appropriate for wholesale and limited purpose institutions, evaluates, *inter alia*, the number and amount of qualified investments. See 12 C.F.R. §§ 25.25(c)(1), 228.25(c)(1), 345.25(c)(1), and 563e.25(c)(1). Finally, institutions evaluated on the basis of a strategic plan must include in their plan how they intend to meet the credit needs of

investment” as “a lawful investment, deposit, membership share or grant that has as its primary purpose community development.”² “Community development” includes “[a]ffordable housing (including multifamily rental housing) for low- or moderate-income individuals.”³

The CRA regulations do not distinguish between “direct” and “indirect” investments. The amount of consideration that an institution receives for an investment depends on the institution’s “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 institution’s assessment area(s).”⁴ An institution’s investment in an equity fund that, in turn, invests in projects that provide affordable housing to low- and moderate-income individuals, would have community development as its primary purpose. Consequently, the institution may receive positive consideration for the investment as a qualified investment under the CRA regulations, provided the investment benefits the institution’s assessment area(s) or a broader statewide or regional area(s) that includes the institution’s assessment area(s).⁵ Similarly, an institution may also receive positive consideration for a direct qualified investment in a nonprofit organization that builds affordable housing for low- and moderate-income individuals in the institution’s assessment area(s) or a broader statewide or regional area(s) that includes the institution’s assessment area(s). In either case, CRA examiners would consider the qualified investment under the investment test, without regard to the form of the investment.

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their assessment area(s). They may meet credit needs through lending, *investment*, and/or services, as appropriate. See 12 C.F.R. §§ 25.27(f)(1), 228.27(f)(1), 345.27(f)(1), and 563e.27(f)(1) (emphasis added).

² See 12 C.F.R. §§ 25.12(s), 228.12(s), 345.12(s), and 563e.12(r). Each financial institution must determine whether a particular investment is authorized by the laws and regulations under which the institution operates and derives its authority. Neither the Community Reinvestment Act nor this letter independently provides such authority.

³ See 12 C.F.R. §§ 25.12(h)(2), 228.12(h)(2), 345.12(h)(2), and 563e.12(g)(2).

⁴ See 12 C.F.R. §§ 25.23, 228.23, 345.23, and 563e.23.

⁵ For a wholesale or limited purpose institution that has adequately addressed the needs of its assessment area(s) or a broader statewide or regional area that includes the institution’s assessment area(s), a qualified investment may benefit areas outside the assessment area(s). See 12 C.F.R. §§ 25.25(e)(2), 228.25(e)(2), 345.25(e)(2), and 563e.25(e)(2).

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I trust this letter has been responsive to your inquiry. Because the four federal financial institution supervisory agencies have promulgated substantively identical CRA regulations, staff from all of the agencies have considered the issue you raised and they concur in the opinions expressed in this letter. If you have any additional questions, please feel free to contact me or Julie Yang, an attorney on my staff, at (202) 874-5750.

Sincerely,

/s/

Michael Bylsma
Director
Community and Consumer Law
Office of the Comptroller of the Currency