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

Interpretive Letter #784
June 1997
12 U.S.C. 2901

May 30, 1997

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Dear [ ]:

This letter responds to your correspondence dated January 13, 1997, requesting clarification related to equity-equivalent investments by banks for community development and community reinvestment purposes. You note that under provisions of the Community Reinvestment Act (CRA) regulations, a bank may ask the federal financial institution regulators to consider favorably under the lending test community development loans[1] originated by third parties in which the bank has invested.

You state that your organization, [ ] (A), is a non-profit community development financial institution, with an emphasis on community development lending that [A] is hoping to structure an investment by a bank in [A] as an equity-eqivalent investment and thus allow the bank to have its pro rata share of [A]'s total lending considered for CRA credit. You further state that while [A] "originates" all loans, a broker entity makes the credit decision and funds the loans in many cases. You indicate that [A] takes a mortgage application from a borrower, as well as underwrites, closes, and services the loan. In your correspondence, you ask whether the full amount of all community development loans that [A] "originates" can be counted by an investor-bank.

As you know, the CRA regulations establish the framework and criteria by which the regulatory agencies assess an institution's record of helping to meet the credit needs of its community. The four bank and thrift regulatory agencies (Agencies) have promulgated substantively identical CRA regulations. Therefore, staff from all of the agencies have considered the issues you raised and concur in the opinions express in this letter.

[1] The terms "community development" and "community development loans" are defined at 12 C.F.R. §§ 25.12(h) and (i), 228.12(h) and (i), 345.12(h) and (i), and 563e.12(h) and (i).

As discussed more fully below, the full amount that [A] "originates," according to your usage of the term, may not be considered under the regulation's lending test with respect to the CRA record of investing financial institutions.

Sections 25.22(a)(2) and (3)[2] state that originations and purchases of loans will be considered under the lending test. The term "origination" is not defined in the CRA regulations. Nonetheless, the CRA regulations incorporate by reference the applicable provisions of the Home Mortgage Disclosure Act's (HMDA) implementing regulation, Federal Reserve Board Regulation C, in the definition of "home mortgage loan," and the section of the regulation dealing with data collection, reporting, and disclosure requirements.[3] (Terms such as "origination" as used in the CRA regulation are intended to be interpreted consistent with Regulation C.)

You state that [A] engages in a variety of activities, including taking loan applications, underwriting and closing loans, and servicing the loans. As you have noted in a telephone conversation with Neil Robinson of my staff, [A] will make the credit decisions and fund loans itself in certain situations. However, in other circumstances, [A] will make a preliminary determination as to the creditworthiness of the borrower and forward the loan file to another entity that makes the final credit decision and funds the loan. You note that these entities generally report the loans and originations under HMDA. In the first situation, it is clear that [A] is originating the loans. In the second situation, however, Agency staff believe that these activities may be broadly described as "loan brokering" -- and not loan origination -- on the part of [A]. According to the Staff Commentary to Regulation C, an institution that takes and processes a loan application and arranges for another institution to acquire the loan at or after the closing is acting as a "broker" and an institution that acquires a loan from another institution at or after closing is acting as an "investor."[4]

Thus, Agency staff believe that a financial institution that makes an equity-equivalent investment in [A] may claim a pro rata share, under § 25.22(a)(3) of only those community development loans actually approved (and made), rather than brokered, by [A]. In the example in your letter, if [A] were the ultimate credit decisionmaker (and maker) of only $1 million of $3 million in community development loans, only those $1 million in community development loans would be eligible for consideration pursuant to Section 25.22(a)(3). The other $2 million in community

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[2] For convenience, we will use the appropriate citations to the OCC CRA regulations in the body of this letter. Identical provisions in the other agencies' regulations are found at 12 C.F.R. §§ 228.22(a)(2) & (3), 345.22(a)(2) & (3), and 563e.22(a)(2) & (3).

[3] "Home mortgage loan" is defined in 12 C.F.R. §§ 25.12(m), 228.12(m), 345.12(m), and 563e.12(n) as a "home improvement loan" or a "home purchase loan," as defined in HMDA's implementing regulations, 12 C.F.R. § 203.2. See also the loan information required to be reported for home mortgage loans in 12 C.F.R. §§ 25.42(b)(3), 228.42(b)(3), 345.42(b)(3), and 563.42(b)(3).

[4] 12 C.F.R. Part 203, Supp. I, Comment 1(c)-5. See also 12 C.F.R. Part 203, Supp. I, Comment 1(c)-7 and 12 C.F.R. Part 203, App. A, § IV.A.4.

development loans that [A] brokered would not be eligible for consideration pursuant to Section 25.22(a)(3), as [A] would not be considered to have originated them. Thus, an institution that invests in [A] can ask its regulator to consider the institution's pro rata share (based on the institution's percent of equity in [A]) of community development loans made by [A]. The investor-bank alternatively could opt to have its entire investment in [A] considered as a qualified investment under the investment test.[5]

I trust this information is helpful to you. If you have any questions, please feel free to contact me or Neil M. Robinson, an attorney on my staff, at (202) 874-5750.

Sincerely,

/s/

Michael S. Bylsma
Director
Community and Consumer Law Division

[5] See 12 C.F.R. §§ 25.23, 228.23, 345.23, 563e.23. See also Interagency Staff Opinion Letters from Matthew Roberts dated June 27, 1996 and June 14, 1996 (designated as OCC Interpretive Letters No. 727 and 709, respectively).