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

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**Interpretive Letter #799  
September 1997  
12 U.S.C. 2901**

September 3, 1997

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Dear [ ]:

H. Fred Mendez, Community Investment Specialist of the Federal Reserve Bank of San Francisco, requested in a June 12, 1997, letter to Stephen Cross, Deputy Comptroller, Community and Consumer Policy, that the Office of the Comptroller of the Currency (OCC) issue an interagency interpretive letter addressed to [ ]. The letter has been forwarded to me for reply. The purpose of this interagency letter is to provide broadly applicable guidance regarding the implications under the Community Reinvestment Act (CRA) regulations of financial institution participation in funds such as the CRA Industrial Growth Fund, L.P., of [ ]. Please be advised that the four financial regulatory agencies neither endorse nor certify particular lending or investment products.

**The Fund**

You provided two documents for review, an Overall Summary dated May 23, 1997, and a Private Placement Memorandum dated June 26, 1997. Due to slight differences in these materials, this discussion will focus on the more recent document.

According to the Private Placement Memorandum (Memorandum), the CRA Industrial Growth Fund (the Fund) will be a private equity limited partnership that intends to invest in U.S.-based industrial and manufacturing companies in low- and moderate-income geographies. These companies will have \$10 million to \$100 million in annual sales.<sup>1</sup> The Fund seeks to invest in the following sectors: pulp and paper, chemical, food processing, beverage, bio-

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<sup>1</sup> Page 1 of the Memorandum cites a maximum annual sales level of \$100 million.

technical, pharmaceutical, and telecommunications. The general partners expect job growth and expanded capital availability to result from the Fund's investments.

The Fund's structure will allow either a single financial institution or several financial institutions to invest as limited partners. The communities in which the Fund's limited partners conduct business will constitute the Fund's primary, geographical investment areas.

### Discussion

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 have promulgated substantively identical CRA regulations. Therefore, staff from all of the agencies have considered the issues you raised, and concur in the opinions expressed in this letter.

The CRA regulations provide several different evaluation methods for examiners to use, depending on the business strategy and size of the institution under examination. Regardless of the performance test used to evaluate a regulated financial institution, an institution may receive positive consideration for making "qualified investments" that help meet the credit needs of the institution's assessment area(s) or a broader statewide or regional area.<sup>2</sup>

The regulations define a "qualified investment" as "a lawful investment, deposit, membership share or grant that has as its primary purpose community development."<sup>3</sup> "Community development" means, *inter alia*, "[a]ctivities that promote economic development by financing

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<sup>2</sup> 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 Interagency Questions and Answers Regarding Community Reinvestment (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 Qs and As, 61 Fed. Reg. 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 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).

<sup>3</sup> See 12 C.F.R. §§ 25.12(s), 228.12(s), 345.12(s), and 563e.12(r). Investments must be lawful under existing laws and regulations; CRA does not provide financial institutions with any independent authority to make loans or investments.

businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 C.F.R. 121.301) or have gross annual revenues of \$1 million or less" or "[a]ctivities that revitalize or stabilize low- or moderate-income geographies."<sup>4</sup> "Low income" means "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 geography."<sup>5</sup> "Moderate income" means "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 geography."<sup>6</sup>

To be considered as "community development," an activity that promotes economic development by financing businesses or farms that meet certain size eligibility standards must meet both a purpose test and a size test. To meet the purpose test, the activity must promote economic development. An activity is considered to promote economic development if it supports permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income or supports permanent job creation, retention, and/or improvement in low- or moderate-income geographies targeted for redevelopment by federal, state, local or tribal governments. An activity meets the size requirements if it relates to an entity that either meets the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs or if it has gross annual revenues of \$1 million or less. The agencies will presume that any loan or investment in or to an SBDC or SBIC promotes economic development. However, any loan or investment in a business that merely meets the size standards applicable to the SBDC or SBIC programs, or has less than \$1 million in gross annual revenues, must also promote economic development if it is to be considered to be community development.<sup>7</sup>

If the primary purpose of an investment is to revitalize or stabilize low- or moderate-income geographies, the intended benefits must be direct and longer-term to receive favorable consideration.<sup>8</sup> The staff of the agencies have addressed the issue in the context of whether all loans in a low- or moderate-income geography must have a stabilizing effect to be considered to have a community development purpose, and although this discussion focuses on loans, it also applies to investments.

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<sup>4</sup> See 12 C.F.R. §§ 25.12(h), 228.12(h), 345.12(h), and 563e.12(g).

<sup>5</sup> 12 C.F.R. §§ 25.12(n)(1), 228.12(n)(1), 345.12(n)(1), and 563e.12(m)(1).

<sup>6</sup> 12 C.F.R. §§ 25.12(n)(2), 228.12(n)(2), 345.12(n)(2), and 563e.12(m)(2).

<sup>7</sup> See Qs and As, 61 Fed. Reg. 54, 647, 54,650 (A and A 1 addressing § \_\_\_\_.12(h)(3)).

<sup>8</sup> See Qs and As, 61 Fed. Reg. 54,647, 54,651 (Q and A 4 addressing § \_\_\_\_.12(i)).

Some loans may provide only indirect or short-term benefits to low- or moderate-income individuals in a low- or moderate-income geography. These loans are not considered to have a community development purpose. For example, a loan for upper-income housing in a distressed area is not considered to have a community development purpose simply because of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income areas residents. On the other hand, a loan for an anchor business in a distressed area (or a nearby area), that employs or serves residents of the area, and thus stabilizes the area, may be considered to have a community development purpose. For example, in an underserved, distressed area, a loan for a pharmacy that employs, and provides supplies to, residents of the area promotes community development.<sup>9</sup>

Examiners may determine that the Fund engages in activities primarily intended to revitalize or stabilize low- or moderate-income geographies.<sup>10</sup> They will make this determination based on information provided to them by the investor financial institutions. In evaluating that information, examiners may consider the following factors:

- Whether the express, bona fide intent of the Fund is to promote the community development purpose of revitalizing or stabilizing a low- or moderate-income geography;
- Whether the Fund is specifically structured to achieve the expressed community development purpose(s); and
- Whether the Fund is reasonably certain to accomplish the expressed community development purpose(s).

If you have any additional questions, please feel free to contact me or Neil Robinson, an attorney on my staff at (202) 874-5750.

Sincerely,

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

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<sup>9</sup> Id.

<sup>10</sup> It is unclear based on only the information that you have provided whether the Fund will engage in activities with a primary purpose of community development. Further, because you state that the Fund will seek to make investments in companies with \$10 - \$100 million in annual sales, these investments will not be considered investments in small businesses.