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

August 14, 1997

**Interpretive Letter #795
September 1997
12 U.S.C. 2901**

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Dear []:

Your letter to Stephen Cross, Deputy Comptroller of the Currency, has been referred to me for response. You inquired whether investment by your bank in two subsidiary community development corporations (CDCs), described below, would be considered favorably during the bank's Community Reinvestment Act (CRA) evaluation. As discussed below and based on the information you have provided, examiners would give favorable consideration to investments in CDCs such as those in which your bank intends to invest.

As you know, the four federal bank and thrift regulatory agencies promulgated substantially similar CRA regulations on May 4, 1995. In order to promote consistent interpretation of these CRA regulations, staff from all four agencies have considered your inquiry and concur in the opinions expressed in this letter.¹

Proposed Investments

To Provide Equipment for Handicapped Individuals

The first CDC in which the bank may invest would purchase equipment to be used by handicapped individuals, primarily elementary and high school students. The equipment would include specialized educational equipment to be used in the students' education, as

¹ This letter addresses only whether lawful investments by federally regulated financial institutions in CDCs such as the ones you describe would receive favorable consideration under the CRA regulations. Under 12 U.S.C. § 24 (Eleventh) and its implementing regulation, 12 C.F.R. part 24, national banks may make investments designed primarily to promote the public welfare. Please contact Lillian M. Long in the OCC's Community Development Division, at (202) 874-4930, regarding the approvals necessary for your bank to invest in the two CDCs.

well as tools of the trade to be used in vocational pursuits after graduation.² The equipment, in turn, would be leased for a period of three to five years at a nominal rental, for example, \$1 per month, either to the Foundation for the Special Education District of [] (“Foundation”) or, less likely, directly to the Special Education School District in the bank’s local community.

In the telephone conversation on July 21, 1997, with Margaret Hesse, you indicated that the handicapped individuals who are provided with the equipment would be selected through a grant application process. You also assured her that those individuals who are selected would be low- or moderate-income, as defined in the CRA regulations.

Your letter indicates that the bank believes that a donation to the Foundation for the purchase of the equipment would be favorably considered by CRA examiners during a compliance examination; however, the total amount of monies involved are too substantial to divert from the bank’s other contributions in any one year. Therefore, the bank proposes to establish the CDC. Ownership of the equipment by the CDC will allow the bank to depreciate the expense over a period of years, creating an accounting procedure for spreading the “donation” without affecting the bank’s income for more than its normal annual contribution.

To Provide a Transitional House for Persons in Need

The second CDC would be established to acquire real estate that would be leased to a social service agency, which provides a full range of social services in the bank’s area. The agency would operate the real estate as a transitional house for new immigrants, dispossessed individuals, families under stress, etc. The persons provided transitional housing would be low- and moderate-income individuals.

The funding for the operation of the home would be the responsibility of the agency and its charitable funding mechanism. The agency would pay only nominal rent to the CDC (for example, \$1,000 per year). The bank intends this investment to provide a long term commitment to the community through the CDC.

Discussion

² In a July 21, 1997, telephone conversation with Margaret Hesse, an attorney on my staff, you mentioned that in one instance, for example, the Foundation provided a student with the tools necessary to pursue a cosmetology vocation upon graduation.

Under the CRA regulations, regardless of the assessment method used by examiners, financial institutions can receive positive consideration for making “qualified investments.”³ “Qualified investment” is defined in the regulations as:

[A] lawful investment, deposit, membership share or grant that has as its primary purpose community development.⁴

“Community development” is defined, *inter alia*, as:

- (1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals; [and]
- (2) Community services targeted to low- or moderate-income individuals⁵

A qualified investment must benefit the institution’s assessment area(s) or a broader statewide or regional area that includes the assessment area(s).⁶ A wholesale or limited purpose institution can also receive consideration for qualified investments that benefit areas outside the institution’s assessment area(s) (or a broader statewide or regional area that includes that institution’s assessment area(s)), if the institution has adequately addressed the needs of its assessment area(s).⁷

³ Large institutions’ CRA performance is typically evaluated under the lending, investment and service tests. Examiners consider large institutions’ qualified investments under the investment test. 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 loan-to-deposit ratio, if appropriate, based on qualified investments. 12 C.F.R. §§ 25.26(a)(1), 228.26(a)(1), 345.26(a)(1), and 563e.26(a)(1). Qualified investments may also be considered to determine if a small institution merits an outstanding CRA rating. 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). The community development test, which is appropriate for institutions designated as wholesale and limited purpose institutions, evaluates, *inter alia*, the number and amount of qualified investments. 12 C.F.R. §§ 25.25(c)(1), 228.25(c)(1), 345.25(c)(1), and 563e.25(c)(1). And, 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. 12 C.F.R. §§ 25.27(f)(1), 228.27(f)(1), 345.27(f)(1), and 563e.27(f)(1) (emphasis added).

⁴ 12 C.F.R. §§ 25.12(s), 228.12(s), 345.12(s), and 563e.12(r).

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

⁶ 12 C.F.R. §§ 25.23(a), 228.23(a), 345.23(a), and 563e.23(a).

⁷ 12 C.F.R. §§ 25.25(e), 228.25(e), 345.25(e), and 563e.25(e).

On October 21, 1996, staff of the agencies published “Interagency Questions and Answers Regarding Community Reinvestment” (“Qs and As”) to provide guidance to examiners and the public.⁸ The Qs and As state:

Community development also includes community- or tribal-based child care, educational, health, or social services targeted to low- or moderate-income persons⁹

These examples were intended to describe “community services,” as that term is used in the CRA regulations. Making equipment available to low- and moderate-income handicapped students would be consistent with providing educational or social services targeted to low- or moderate-income persons. Thus, an investment in a CDC, such as the first one your bank proposes to make, may be considered to have a primary purpose of community development in that the CDC provides community services to low- and moderate-income individuals.

The second CDC in which you propose to invest, which will provide transitional housing for low- and moderate-income persons, may also be considered to have a primary purpose of community development. The transitional housing will be made available through a social service agency that provides a full range of social services in the bank’s community. Making the real estate available to the agency enables it to provide additional social services. In addition, the real estate will help to provide affordable, albeit temporary, housing for low- and moderate-income individuals. Thus, examiners may conclude that an investment in a CDC, such as the second one your bank proposes to make, would have a primary purpose of community development.

I trust this letter is responsive to your inquiry. If you have further questions, please contact me or Ms. Hesse at (202) 874-5750.

Sincerely,

/s/

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

⁸ 61 Fed. Reg. 54,647 (Oct. 21, 1996).

⁹ 61 Fed. Reg. at 54,650 (Q and A 1 addressing § __.12(h) & 563e.12(g)).