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**Comptroller of the Currency  
Administrator of National Banks**

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Washington, DC 20219

**Interpretive Letter #774  
April 1997  
12 U.S.C. 2901**

October 2, 1996

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Dear [        ]:

This letter responds to your correspondence dated July 4, 1996, to Ms. Julia Brown of the Comptroller of the Currency's (OCC's) Western District Office concerning how participation in your CASA Home Loan Program (CASA program) will be considered under the revised Community Reinvestment Act (CRA) regulations. 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.

You have asked whether participation in the CASA program could be treated as either a loan or as an investment for purposes of the CRA regulations and whether and under what circumstances participation in CASA program would receive favorable consideration under the CRA regulations.

As explained in your initial letter, a subsequent letter sent by facsimile transmission on September 26, and several telephone conversations, [        ] (    ) has established the CASA program to provide affordable housing to qualified purchasers in the City of [    ], [ state ] (        ). Under the CASA Program a borrower makes a 5% down payment on a home and obtains a conventional mortgage in the amount an additional 75% of the cost of the home. The remaining cost of the home is financed through: (1) a second mortgage from [    ]; and, (2) if necessary, a third mortgage from the [        ]. The second mortgage will be financed through a funding request from [    ] to a participating institution (either the institution that extended the conventional mortgage or another institution). Upon acceptance of the funding request, the institution makes either a loan to, or an investment in, [    ] in the amount of the second mortgage. [    ] then will use the proceeds of the loan to make the second mortgage to the borrower. The borrower does not make payments on the second mortgage nor does the second mortgage have a set interest rate. The principal on the second mortgage is paid only if and when the home is sold, and interest is contingent upon there being an appreciation in the value of the home. If the value of the home has appreciated

when it is sold, the amount of the appreciation, the contingent interest, is distributed as follows: 40% to the borrower and 60% to be split between [ ] and the second mortgage lender.

You state in your letter that you believe a CASA program second mortgage “has characteristics which should allow it to be classified as either an investment or a loan.” You further state that you believe a policy allowing institutions to categorize CASA program second mortgages “based upon the accounting method selected[,] or other internal criteria[,] is appropriate . . .” (emphasis added). We agree that generally accepted accounting principles will control whether a financial institution’s participation in CASA program second mortgages is a “loan” or an “investment.” As a general matter, therefore, the CRA treatment of the participation will differ depending upon whether the participation is accounted for as a loan or an investment.<sup>1</sup>

We addressed issues similar to those you raised in an interagency letter, signed by Matthew Roberts and published as OCC Interpretive Letter No. 708, dated February 16, 1996 (enclosed).<sup>2</sup> In that letter the agencies concluded that participation in a housing fund that would provide funding for affordable housing loans for low- and moderate-income persons would be considered as either “qualified investments” or “community development loans” under the CRA regulations depending upon how the institutions chose to structure the transaction. The analysis in this interpretive letter would be applicable to the activity you described in your letters and telephone correspondence.

I trust this letter is responsive to your inquiry. If you have any further questions, feel free to contact me or Yvonne McIntire, an attorney on my staff, at (202)874-5750.

Sincerely,

/s/

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

Enclosure

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<sup>1</sup>We note that the Federal Reserve Bank of San Francisco has opined that financial institutions should account for participation in CASA program second mortgages as “other assets.”

<sup>2</sup>The four bank and thrift regulatory agencies have promulgated substantively identical CRA regulations. 12 C.F.R. parts 25, 228, 345, and 563e (1996).