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

August 5, 1997

**Interpretive Letter #793
August 1997
12 U.S.C. 2901**

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Dear []:

This letter responds to your inquiry about whether financial institutions that finance the renovation of the Parkchester condominium complex in the Bronx¹ would receive positive consideration when the institutions' Community Reinvestment Act ("CRA") performance is evaluated by their regulators. As you may know, the four financial institutions regulatory agencies issue interagency CRA interpretive letters for the purpose of providing

¹ Parkchester is a multi-building residential complex in the East Bronx. It includes 12,271 apartment units, approximately a half a million square feet of retail space and five parking garages. Although originally built over 50 years ago to provide moderate-income rental housing, the complex has been converted to condominium ownership. Conversion occurred through the noneviction conversion method, pursuant to which nonbuying tenants could remain indefinitely as renters. According to a *New York Times* article, in 1996 unsold apartments made up just under 40 percent of the units in the North condominium and 57 percent of the units in the South condominium. See Alan S. Oser, *Buyer's Goal at Parkchester: Restoration of a Mini-City*, *N.Y. Times*, Oct. 27, 1996, § 9 (Real Estate), at 1, 6. The tenants were either recent renters of vacant apartments, who were not rent-regulated, or longterm occupants of regulated apartments, whose rent-control or rent-stabilization rights were undisturbed by the conversion. In addition, some of the condominiums were owned by investor-owners who rented them to tenants. According to the same article, in 1996 the number of owner-occupied apartments in the complex was estimated at about 3,400.

Parkchester covers two full census tracts and most of a third. Your letter mentioned that, according to the 1990 census, the Parkchester population was 22,393, although more accurate estimates are in the 40,000 range.

The Parkchester complex has deteriorated substantially in the past decades. All of the major building systems are original and most require upgrading, including, in particular, the plumbing and electrical systems and the windows. Your letter stressed that individual unit values have declined, and that it is widely acknowledged that there is no market for unit end loans due to the physical conditions and high sponsor unit ownership.

consistent guidance to our examiners, financial institutions, and the public. The letters are intended to provide broadly applicable guidance and not to endorse any specific projects or products.

In order to provide broadly applicable guidance as described above, this letter will focus on how an examiner would determine whether loans for renovation of the project, or a similar project, would receive favorable consideration under the CRA regulations.

As you know, the four federal bank and thrift regulatory agencies promulgated substantially similar CRA regulations on May 4, 1995.² Staff from all four agencies have considered your inquiry and concur in the opinions expressed in this letter.

Discussion

Proposed activity

[] ("A") and its subsidiary, [] ("B"), propose to rehabilitate the Parkchester complex.³ [B] has contracted to acquire the unsold units, commercial space and garages at Parkchester. These properties would provide collateral for the rehabilitation loans. [B] is also currently negotiating a comprehensive rehabilitation plan with Parkchester's two condominium boards and unit owners.

To fund the acquisition and development of Parkchester, [A] is

² See 12 C.F.R. pts. 25, 228, 345, and 563e.

³ [A] was incorporated "under the Not-For-Profit Corporation Law of the State of New York for the purpose of making mortgage financing available in selected neighborhoods or projects which are experiencing deterioration or disinvestment. The Corporation accomplishes its purpose by making construction and permanent mortgage loans to the private sector for the development and preservation of residential properties in low and moderate income areas of New York State with a concentration in the New York City area. ... Governmental agencies and private sector organizations participate with the Corporation in many of the mortgage loans that it originates." [A] 1996 Annual Report at 28.

[B] was incorporated "as a for-profit corporation. The purpose of the [wholly owned] subsidiary is to function primarily as a servicer for mortgage loans held by the private sector, to seek equity participation in loans or real estate ownership of residential properties in low and moderate income neighborhoods within New York City ... and to provide consulting services on affordable housing development and financing." [A] 1996 Annual Report at 29.

assembling a group of lenders, including regulated financial institutions, to participate directly in a combined construction and permanent loan facility of about \$130 million. Details of the financing have not yet been determined. In addition to participation in the rehabilitation project, many financial institutions will also provide loans for individual unit sales and refinancings after the rehabilitation is completed.

CRA consideration of loans for renovation

In order to evaluate loans provided to the project by a financial institution during an institution's CRA examination, the examiner must first determine what type of loans they are.

Under the Home Mortgage Disclosure Act regulation (12 C.F.R. pt. 203), multifamily dwelling loans are collected and reported as home mortgage loans if their purpose is the purchase, improvement, or refinancing of multifamily housing. Because the CRA regulations equate "home mortgage loans" with those collected and reported under HMDA as "home mortgage loans" or "home improvement loans," the multifamily dwelling loans for renovation of the Parkchester project would be considered as "home mortgage loans" during financial institutions' CRA evaluations.

However, loans for multifamily rental housing may also be considered as community development loans if they conform with the regulations' definitions.

The CRA regulations define "community development loan" as a loan that:

- (1) Has as its primary purpose community development; and
- (2) Except in the case of a wholesale or limited purpose bank:
 - (i) Has not been reported or collected by the institution or an affiliate for consideration in the institution's assessment as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan ...; and
 - (ii) Benefits the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s).⁴

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

"Community development" is defined in the regulations to include:

- (1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;
- . . . OR
- (4) Activities that revitalize or stabilize low- or moderate-income geographies.⁵

The community development activities defined in the regulations focus on low- or moderate-income individuals or geographies. Examiners would evaluate whether the residents of Parkchester or the area in which Parkchester is located are low- or moderate-income, as defined by the regulations.⁶ Parkchester's three census tracts, according to the 1990 census data, were all middle-income geographies.⁷ And, according to available information, Parkchester had a mix of low-, moderate-, middle-, and upper-income residents.⁸

The agencies, however, have clarified that examiners have discretion to consider financial institutions' performance in high-cost areas. The agencies have provided the following guidance:

The flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost

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

⁶ "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 a geography." "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 a geography." 12 C.F.R. §§ 25.12(n), 228.12(n), 345.12(n), and 563e.12(m).

⁷ According to CRA WIZ, based on 1990 census data, the census tracts (CTs) in which Parkchester is located had the following median family incomes: CT 0210.00 -- \$34,241; CT 0212.00 -- \$36,545; and CT 0216.02 -- \$35,969. These amounts correspond to the following percentages of MSA median income: 91.27%; 97.41%; and 95.88%, respectively, and thus are middle-income geographies.

⁸ For example, according to CRA WIZ, in CT 0212.00, of the 2,466 households counted in the 1990 census, 25.22% were low-income, 13.95% were moderate-income, 22.10% were middle-income, and 38.69% were high-income. In the same census tract, of the 1,460 families counted, 20.27% were low-income, 21.23% were moderate-income, 21.10% were middle-income, and 37.47% were upper-income.

areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their "primary purpose" community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining, or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development.⁹

It is generally agreed that the New York Metropolitan Statistical Area (MSA) is a high-cost area. Evidence of this is demonstrated by the Runzheimer Index for New York, NY.¹⁰ Therefore, examiners would consider the fact that the renovation will take place in a high-cost area in determining whether the activities are community development, either as providing affordable housing or revitalizing the area.

Examiners may determine that the renovation of Parkchester has either or both of these activities as its primary purpose. They will make this determination based on loan documents and other information provided to them by the financial institutions. In evaluating that information, examiners will generally consider the following factors:

- Whether the express, bona fide intent of the renovation project, as stated, for example, in the loan proposal, is primarily to provide affordable housing for low- and

⁹ Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment, 61 Fed. Reg. 54,647, 54,650 (Oct. 21, 1996) (Q&A3 addressing §§ __.12(h) & 563e.12(g)).

¹⁰ Runzheimer International, an international management consulting firm, prepares an annual living cost comparison of various cities. For example, in 1995, the Runzheimer index for New York, NY was 123.1, compared to the median of 100.0.

moderate-income individuals and/or to revitalize or stabilize a low- or moderate-income area ("the community development purpose(s)");

- Whether the renovation project is specifically structured to achieve the expressed community development purpose(s); and
- Whether the renovation project is reasonably certain to accomplish the community development purposes.¹¹

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

Sincerely,

/s/

Michael S. Bylsma
Director
Community and Consumer Law Division

¹¹ Examiners may consider the past record of performance of CPC and CPCR in community development endeavors as relevant to this factor.