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

**Interpretive Letter #809
January 1998
12 U.S.C. 2901**

November 20, 1997

Dear []:

This letter responds to your letter inquiring about the data collection requirements and performance standards for small wholesale institutions under the Community Reinvestment Act (CRA) regulations.

You explained in your letter and subsequent telephone conversation with agency staff that you represent a bank that is currently designated as a wholesale bank.¹ You state that the bank's assets remain under \$250 million and that it is independent of a holding company. With respect to the record keeping and performance criteria for wholesale banks, you have asked the following:

- Whether a small bank subsequently designated as a wholesale bank needs to comply with the CRA regulations' data reporting requirements.
- What type of data is required for community development loans, and how this data would be interpreted for compliance with the Act.
- Whether letters of credit and acceptances qualify for consideration under the community development lending test.

¹A wholesale institution is an institution that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect, in accordance with Sec. 25.25(b). 12 C.F.R. §§ 25.12(w), 228.12(w), 345.12(w), and 563e.12(v). In order to receive a designation as a wholesale institution, the institution must file a request, in writing, with the appropriate financial institution regulatory agency and have the agency approve the designation. 12 C.F.R. §§ 25.25(b), 228.25(b), 345.25(b), and 563e.25(b). You have indicated that the institution in question has obtained agency approval for designation as a wholesale institution.

- Whether commitments for community development loans, made in a prior period and still outstanding in the bank's books, can be recognized for the CRA compliance evaluation.
- Whether an investment in county school board bonds or water and sewer department bonds would be considered a qualified investment.
- Whether qualified investments are considered only in the year purchased or whether they can be taken into consideration as long as the bank maintains them on its books.

As you know, the CRA regulations establish the framework and criteria by which the four bank and thrift regulatory agencies (Agencies) assess an institution's record of helping to meet the credit needs of its community. The Agencies have promulgated substantively identical CRA regulations.² Therefore, staff from all of the Agencies (Staff) have considered the issues you raise and concur with the opinions expressed in this letter.

Data Collection Requirements

The CRA regulations only require data collection by banks that are not "small institutions."³ Small institutions are institutions that, as of December 31 of either of the prior two calendar years, had total assets of less than \$250 million and were independent or were affiliates of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than \$1 billion.⁴

This exception to the data collection requirement applies to all small institutions (except those choosing to be evaluated under the lending, investment and service tests), including those that are designated as wholesale or limited purpose institutions.⁵ The exception notwithstanding, small wholesale or limited purpose institutions must be prepared to identify those loans, investments, and services to be evaluated under the community development test.⁶

Community Development Loans

²12 C.F.R. parts 25, 228, 345, and 563e.

³12 C.F.R. §§ 25.42, 228.42, 345.42. and 563e.42.

⁴12 C.F.R. §§ 25.12(t), 223.12(t), 345.12(t), and 563e.12(s).

⁵Interagency Questions and Answers Regarding Community Reinvestment (hereinafter "Qs and As"), 62 Fed. Reg. 52105, 52124, Q/A 7, addressing § _____.42. Institutions that would otherwise be evaluated under the performance standards for small institutions may choose to be evaluated under the lending, investment and service performance standards used to evaluate large retail institutions. See 12 C.F.R. §§ 25.21(a)(3), 228.21(a)(3), 345.21(a)(3) and 563e.21(a)(3).

⁶*Id.*

Under the community development test, wholesale and limited purpose banks are evaluated on, among other things, the number and amount of community development loans⁷ (including originations and purchases of loans and other community development loan data provided by the bank, relating to loans outstanding, commitments, and letters of credit).⁸ Consequently, letters of credit, acceptances, and loans outstanding that have as their primary purpose community development would receive consideration under the CRA regulations. In addition, loan commitments must be legally binding between an institution and a borrower in order to be considered.⁹ Again, although reporting of data on commitments, acceptances, letters of credit and loans outstanding is not required, the institution should be prepared to identify these transactions for examiner evaluation.

Please note that considerations beyond the number and dollar amount of such community development loans will affect the level of favorable consideration that examiners will accord them. The extent to which community development lending would receive favorable consideration also depends on the innovativeness and complexity of the lending activity.¹⁰

Qualified Investments

In addition to community development lending, a wholesale institution's performance is evaluated on the basis of the number and amount of its qualified investments. A qualified investment is a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.¹¹ Qualified investments include investments in state and municipal obligations, such as revenue bonds, only if the bonds are primarily for affordable housing for low- and moderate-income individuals, community services targeted to low- and moderate-income persons, or revitalization of low- and moderate-income areas.¹² General purpose municipal bonds typically are not considered to have a community development

⁷With respect to wholesale institutions, a community development loan is a loan that has as its primary purpose community development. 12 C.F.R. §§ 25.12(i)(1), 228.12(i)(1), 345.12(i)(1), and 563e.12(h)(1). Community development means: (1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals; (2) Community services targeted to low- or moderate-income individuals; (3) Activities that promote economic development by financing 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 (4) Activities that revitalize or stabilize low- or moderate-income geographies. 12 C.F.R. §§ 25.12(h), 228.12(h), 345.12(h), and 563e.12(g).

⁸12 C.F.R. §§ 25.25, 228.25, 345.25, and 563e.25.

⁹Qs and As, 62 Fed. Reg. at 52116 Q/A 1, addressing § _____.22(a)(2).

¹⁰12 C.F.R. §§ 25.25(c)(2) and (3), 228.25(c)(2) and (3), 345.25(c)(2) and (3), and 563e.25(c)(2) and (3).

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

¹²See Qs and As, 62 Fed. Reg. at 52114-15 Q/A 4, addressing § _____.12(s) and 563e.12(r).

purpose. An institution's investment in a bond to finance school services would be considered a qualified investment only if the services will be targeted primarily to low- and moderate-income individuals.¹³ Similarly, an investment in a bond for water and sewer facilities that are part of a plan to revitalize a low- or moderate-income neighborhood could constitute a qualified investment.¹⁴

With respect to consideration given to qualified investments, although institutions may exercise a range of investment strategies, including short-term investments, long-term investments, investments that are immediately funded, and investments with a binding up front commitment that are funded over a period of time, institutions making the same dollar amount of investment over the same number of years, all else being equal, would receive the same level of consideration.¹⁵ Generally, examiners will consider all qualified investments that are on an institution's books, including investments made since the preceding examination, and also will consider the investments' innovativeness or complexity, the extent to which they are not routinely provided by private investors, and their responsiveness to credit and community development needs.¹⁶

I trust this letter has been responsive to your inquiry. If you have any additional questions, please feel free to contact me or Yvonne McIntire of my staff at (202) 874-5750.

Sincerely,

/s/

Michael Bylsma
 Director
 Community and Consumer Law Division

¹³See Interagency Staff CRA Opinion Letter from Michael Bylsma (Sept. 17, 1997) (designated as OCC Interpretive Letter No. 802) (copy enclosed). See also Interagency Staff CRA Opinion Letter from Glenn E. Loney (Aug. 29, 1997) (copy enclosed).

¹⁴See Qs and As, 62 Fed. Reg. at 52,114, Q/A 2, addressing §§ __.12(s) and 563.12(r).

¹⁵See Interagency Staff CRA Opinion Letter from Michael Bylsma (Sept. 11, 1997) (designated as OCC Interpretive Letter No. 800) (copy enclosed).

¹⁶12 C.F.R. §§ 25.25(c)(2) and (3), 228.25(c)(2) and (3), 345.25(c)(2) and (3), and 563e.25(c)(2) and (3).