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

September 3, 1997

**Interpretive Letter #798
September 1997
12 U.S.C. 2901**

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Dear Messrs. [] and []:

The letters from [] and the financial institution representatives on the [] Board of Directors have been referred to me for response. These letters ask whether investments in []'s non-rated (community development) securities, which are secured by loan pools, could be considered as loans during financial institutions' Community Reinvestment Act (CRA) examinations under the lending test. As discussed more fully below, if the financial institutions purchase and hold the securities as loans or loan participations, the institutions may have them considered under the lending test during their CRA evaluations.

As you know, the four federal bank and thrift regulatory agencies promulgated substantially similar CRA regulations on May 4, 1995.¹ Staff from all four agencies have considered your inquiry and concur in the opinions expressed in this letter.

[] Securities

According to the letters, since 1975, [] has originated loans that have been used to acquire and/or rehabilitate primarily one- to four-unit properties in targeted low- and moderate-income neighborhoods. []'s loans are pooled and used to back non-rated securities, which are purchased by [] participating institutions. These securities are not saleable in the standard secondary market because they are non-conforming.

¹ See 12 C.F.R. pts. 25, 228, 345, and 563e.

In your letters, you state that if financial institutions could receive consideration of these securities under the lending test,² new opportunities for loans and capital for [] and the neighborhoods it serves would be created.

Consideration under CRA

It is the position of staff of the agencies that, if a security with a community development purpose is held and accounted for by a financial institution as an investment security, it would be considered as a qualified investment³ under the investment test for CRA purposes.⁴ Alternatively, if a security, such as []'s security, is held, accounted for, and reported for CRA purposes by the financial institution as a loan, the institution may have it considered under the CRA regulations' lending test.⁵

I trust this responds 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
Office of the Comptroller of the Currency

² This letter addresses only the issue of whether the securities may be considered under the CRA regulations' lending test. It assumes without making a determination that the securities have a community development purpose. Also, please note that the agencies do not endorse particular investment opportunities offered to financial institutions.

³ A "qualified investment" is a "lawful investment ... that has as its primary purpose community development." 12 C.F.R. §§ 25.12(s), 228.12(s), 345.12(s), and 563e.12(r). The CRA and its implementing regulations do not provide authority for institutions to make investments that are not otherwise allowed under Federal laws and regulations.

⁴ Generally, mortgage-backed securities with a community development purpose are considered as qualified investments under the investment test. See, e.g., Interagency Questions and Answers Regarding Community Reinvestment, 61 Fed. Reg. 54,647, 54,653 (Oct. 21, 1996) (question and answer 2 addressing § __.12(s) & 563e.12(r)).

⁵ See, e.g., Interagency CRA Staff Interpretive Letter from Matthew Roberts, Director, Community and Consumer Law Division, OCC (Apr. 15, 1996), *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. ¶ 81-038 (designated as OCC Interpretive Letter No. 723); Interagency CRA Staff Interpretive Letter from Matthew Roberts, Director, Community and Consumer Law Division, OCC (Feb. 16, 1996), *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. ¶ 81-023 (designated as OCC Interpretive Letter No. 708).