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

*Interpretive Letter #750
October 1996
12 U.S.C. 2901*

September 23, 1996

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Dear []:

This letter responds to your correspondence dated August 9, 1996, in which you asked for confirmation that a grant to a project that would help place low- and moderate-income individuals into affordable rental properties would receive positive consideration under the Community Reinvestment Act (CRA) regulations. As you know, the four bank and thrift regulatory agencies adopted substantively identical CRA regulations on May 4, 1995. Therefore, staff from all of the agencies have considered the issue you raised, and they concur with my opinion that such a grant would receive positive consideration under the CRA regulations.

The Program

According to your letter, your bank is considering participating with the state Bar Association in a program that will facilitate identification and placement of individuals in need into affordable rental apartment units.¹ The Bar Association has found that many of the low- and moderate-income individuals coming to its Legal Aid Pro Bono Section have deep-rooted problems that already have or are about to be affected by housing issues. For example, a battered woman may come to the association on domestic violence issues, but is also without housing and, although employed, without sufficient funds to pay the required deposit to rent an apartment.

The Bar Association, with the bank's grant, will operate a program to amass an inventory of vacant apartments that property owners will make available to individuals in need at initially lower rents and generally without any deposit. These properties generally will be used as transitional residences with a duration of six months to a year. The bank's grant will enable the

¹ The scope of this letter is limited to whether the proposed grant would receive favorable consideration under the investment test of the CRA regulations. In offering this opinion, the agencies are not providing endorsement for this particular program.

Bar Association to dedicate a full-time employee to establish and coordinate the program. Assuming that the program proves successful, the bank's commitment to the program will likely be ongoing.

Consideration under the CRA

You have indicated that your bank will be evaluated under the lending, investment and service tests of the new CRA regulations. However, regardless of the test used by examiners, financial institutions can receive positive consideration for making "qualified investments."²

"Qualified investment" is defined in the new regulations as:

[A] lawful investment, deposit, membership share or grant 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).

"Community development" is defined to include:

Affordable housing (including multifamily rental housing) for low- or moderate-income individuals; [or]

Community services targeted to low- or moderate-income individuals.

12 C.F.R. §§ 25.12(h)(1) & (2), 228.12(h)(1) & (2), 345.12(h)(1) & (2), and 563e.12(g)(1) & (2).

Based on the information you supplied, a grant by the bank to enable an entity such as the Bar Association to operate a program of the type you described appears to have as its primary purpose community development because the program will provide the community services of housing referral and assistance to low- and moderate-income individuals. The

² Large institutions' CRA performance is typically evaluated under the lending, investment and service tests. Examiners consider large institutions' qualified investments under the investment test. See 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. See 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. See 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 wholesale and limited purpose institutions, evaluates, *inter alia*, the number and amount of qualified investments. See 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. See 12 C.F.R. §§ 25.27(f)(1), 228.27(f)(1), 345.27(f)(1), and 563e.27(f)(1) (emphasis added).

end result will be the provision of affordable housing to low- or moderate-income individuals who need housing (in addition to legal aid services, in this case). Therefore, examiners will give positive consideration as a qualified investment to such a grant.

I trust this letter has been responsive to your inquiry. You may also be interested to know that the staffs of the four financial supervisory agencies are presently developing guidance to aid financial institutions and the public in resolving interpretive questions arising under the new CRA regulations. In the meantime, feel free to contact me or Margaret Hesse, an attorney on my staff, at (202) 874-5750 if you have further questions.

Sincerely,

/s/

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