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

March 14, 1997

**Interpretive Letter #773
March 1997
12 U.S.C. 2901**

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Dear []:

This letter responds to your correspondence requesting an opinion about the applicability of the Community Reinvestment Act ("CRA") to financial institutions' assistance to the Family Loan Program ("Program"), a program that provides loans and financial management training to low-income parents to pay for unexpected expenses that could interfere with their ability to keep a job or stay in school.¹ As discussed more fully below, financial institutions may receive positive consideration for activities in connection with a social service agency's program such as the Family Loan Program in their CRA evaluations.

As you know, the four federal bank and thrift regulatory agencies promulgated substantially similar CRA regulations on May 4, 1995. In order to promote consistent interpretation of these CRA regulations, staff from all four agencies have considered your inquiry and concur in the opinions expressed in this letter.

The Program

The Program, developed in [state] by the [], provides small loans to low-income parents who cannot get loans elsewhere. Program loans help borrowers pay for unexpected expenses that could interfere with their ability to keep a job or stay in school. The Program is but one of a comprehensive array of social services provided by the social service agencies that participate in and/or administer the Program.

¹ The agencies do not endorse particular investment opportunities available to financial institutions. The purpose of this letter is to provide general guidance to [] ("Inc") that may also be useful to organizations similar to [Inc] and to financial institutions.

To qualify for a Program loan, a borrower must either be employed or pursuing post-high school education that will enable the borrower to obtain employment, e.g., vocational training, such as secretarial or cosmetology school, or college. Borrowers also must participate in financial management classes provided by the social service agency administering the Program.

Loans are available for automobile purchase or repair, mortgage or rent payment, child care expenses and other purposes. Loans may not be used to pay for tuition or books, travel, taxes, fines, business expenses, or credit card bills. The maximum amount that may be borrowed under the Program varies, based on the purpose of the loan, from \$500 (for loans for "other purposes") to \$2,200 (for loans for automobiles).

[]("Inc"), a national non-profit membership organization representing the nation's largest network of family-serving agencies, in a cooperative effort with the [], is replicating the Program at several demonstration sites within [Inc]'s national network. [Inc] agencies provide a wide range of family social services, from family economics to family social development to employment and job training. The local [Inc]-member agencies will administer the Program and provide additional support to the low-income applicants and borrowers.

Local communities in the national replication effort must secure funding for a portion of the loan pool (the balance to be provided by the []) and all of the funding to cover program administration costs for three years. Some financial institutions have expressed an interest in helping local [Inc] agencies to meet these funding requirements and in providing other services, such as loan servicing, to the Program.

In your letter and telephone conversations with my staff, you have asked five questions:

- Would financial institutions' contributions to the Program's loan pools qualify as an eligible CRA activity?
- Would financial institutions' contributions to fund Program administration at the national and local levels qualify as an eligible CRA activity?
- Would financial institutions' contributions that enable [Inc] member agencies to provide van pools for transporting low- and moderate-income people to jobs qualify as an eligible CRA activity?

- Would loans to the [Inc]to expand the loan pool, after the original loan pool is funded by contributions/grants, qualify as an eligible CRA activity?
- Would financial institutions' participation by servicing loans qualify as an eligible CRA activity?

Discussion

Bank Contributions

Because the first three of your questions address bank contributions to [Inc] or [Inc] agencies to fund different aspects of the Program, or other services provided by [Inc]-member agencies, they will be addressed together.

Regardless of the performance test under which a regulated financial institution is evaluated, ² institutions can receive positive consideration for making "qualified investments."

"Qualified investment" is defined in the recently amended CRA regulations as:

[A] lawful investment, deposit, membership share or

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 evaluation under the small institution performance criteria, if appropriate, based on lending-related qualified investments. See 12 C.F.R. §§ 25.26(a)(1), 228.26(a)(1), 345.26(a)(1), and 563e.26(a)(1). See also Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment (hereinafter "Qs and As"), 61 Fed. Reg. 54,647, 54,658 (Oct. 21, 1996) (Q and A 1 addressing § __.26(a) (consideration of small institutions' lending-related activities)). 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). See also Q and A 5 addressing § __.26(a), 61 Fed. Reg. at 54,659. 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).

grant that has as its primary purpose community development.³

"Community development" is defined to include:

Community services targeted to low- or moderate-income individuals.⁴

Under the appropriate CRA performance tests, examiners will give positive consideration⁵ to qualified investments that help meet the credit needs of an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s).⁶ And, in the case of wholesale and limited purpose institutions, examiners will give positive consideration to qualified investments nationwide if the institution has adequately addressed the needs of its assessment area(s).⁷

[Inc]and local [Inc]-member agencies provide a number of community services to low- and moderate-income persons. Many of these programs enable low- and moderate-income persons to support themselves, rather than depend on public welfare programs. The Program and van pool projects are two such community services.

Financial institutions' contributions to [Inc]or local [Inc]-member agencies to help provide community services such as the

³ 12 C.F.R. §§ 25.12(s), 228.12(s), 345.12(s) and 563e.12(r). This letter assumes, without deciding, that the contributions by financial institutions to [Inc] and the [Inc] agencies are lawful.

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

⁵ See *supra* note 2 for a discussion of how examiners consider qualified investments under the various performance tests.

⁶ See 12 C.F.R. §§ 25.23(a), 25.25(e)(1), 25.26(a), 25.27(f)(1)(i), 228.23(a), 228.25(e)(1), 228.26(a), 228.27(f)(1)(i), 345.23(a), 345.25(e)(1), 345.26(a), 345.27(f)(1)(i), 563e.23(a), 563e.25(e)(1), 563e.26(a), and 563e.27(f)(1)(i). See also Q and A 2 addressing § __.26(b), 61 Fed. Reg. at 54,659-60 (consideration of a small institution's qualified investments in a statewide or regional area that includes the institution's assessment area(s)).

⁷ 12 C.F.R. §§ 25.25(e)(2), 228.25(e)(2), 345.25(e)(2), 563e.25(e)(2).

Program and the van pool project would be grants ⁸ that have as their primary purpose community development. These grants help an institution to meet the credit needs of its community by funding community services that enable low- and moderate-income individuals to continue to work or to attend school to enhance their employability. Such grants, therefore, would receive favorable consideration during an institution's CRA evaluation, assuming the grants benefit the institution's assessment area(s), as described above.

Bank loans

Once the base loan pool is funded through contributions, a local [Inc]-member agency may wish to expand the loan pool. One way in which the agency may raise the funds to expand the loan pool is by borrowing from financial institutions. The loans could be collateralized by the fully funded base loan pool. The expanded loan pool would be used to provide loans to help more borrowers pay for unexpected expenses that could interfere with their ability to keep a job or stay in school.

Regardless of which performance test under which a regulated financial institution is evaluated, ⁹ institutions can receive positive consideration for making "community development loans."

A "community development loan" has as its primary purpose community development. ¹⁰

⁸ See Q and A 5 addressing § __.12(s) and 563e.12(r), 61 Fed. Reg. at 54,653 .

⁹ Examiners consider large institutions' community development lending under the lending test. See 12 C.F.R. §§ 25.22(b)(4), 228.22(b)(4), 345.22(b)(4), and 563e.22(b)(4). In a small institution examination, examiners may adjust an institution's loan-to-deposit ratio, if appropriate, based on community development loans. See 12 C.F.R. §§ 25.26(a)(1), 228.26(a)(1), 345.26(a)(1), and 563e.26(a)(1). The community development test, which is appropriate for wholesale and limited purpose institutions, evaluates, *inter alia*, the number and amount of community development loans. 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).

¹⁰ 12 C.F.R. §§ 25.12(i)(1), 228.12(i)(1), 345.12(i)(1), and 563e.12(h)(1).

Except in the case of wholesale and limited purpose institutions, community development loans may not have been reported or collected by the institution or an affiliate for consideration in the institution's assessment

As stated above, the [Inc]-member agencies provide community services targeted to low- or moderate-income individuals, as envisioned by the definition of "community development" in the CRA regulation.¹¹ Thus, loans to [Inc]-member agencies to expand the loan pool would have as their primary purpose community development because the loans allow the local [Inc]-member agencies to provide additional community services. Therefore, examiners would consider such loans positively during a CRA evaluation, assuming the loans benefit the lending institutions' assessment areas.¹²

Loan servicing

Financial institutions may provide loan servicing to [Inc] agencies in connection with the loan pools. The institutions may receive a fee or other compensation for the servicing they provide.

Many services that financial institutions offer to the public are considered during their CRA evaluations. In addition to retail banking services, examiners also consider community development services that institutions provide.¹³

as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan. 12 C.F.R. §§ 25.12(i)(2)(i), 228.12(i)(2)(i), 345.12(i)(2)(i), and 563e.12(h)(2)(i). (Given the facts you presented, it is unlikely that financial institutions' loans to [Inc]-member agencies for purposes of expanding the loan pool would be collected and reported as small business loans. However, if loans to the agencies would qualify as "loans to small businesses" pursuant to the instructions in the "Consolidated Reports of Condition and Income" (Call Report) and "Thrift Financial Reports" (TFR), these loans would be collected and reported by the financial institution as small business loans for CRA purposes.)

In addition, community development loans must benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). 12 C.F.R. §§ 25.12(i)(2)(ii), 228.12(i)(2)(ii), 345.12(i)(2)(ii), and 563e.12(h)(2)(ii). However, limited purpose and wholesale institution's community development loans may be considered nationwide if the institution has adequately addressed the needs of its assessment area(s). 12 C.F.R. §§ 25.25(e)(2), 228.25(e)(2), 345.25(e)(2), 563e.25(e)(2).

¹¹ See 12 C.F.R. §§ 25.12(h), 228.12(h), 345.12(h), and 563e.12(g).

¹² See *supra* note 10.

¹³ Examiners evaluate large institutions' community development services under the service test. See 12 C.F.R. §§ 25.24(e), 228.24(e), 345.24(e), and 563e.24(e). Services that enhance credit availability in an institution's assessment area(s), including community development services, may 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

A "community development service" is a service that:

- (1) Has as its primary purpose community development;
- (2) Is related to the provision of financial services;
- and
- (3) Has not been considered in the evaluation of the institution's retail banking services¹⁴

Generally, a community development service will be considered, regardless of the performance test to which the financial institution is subject, if the service benefits the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s).¹⁵ In addition, examiners will consider limited purpose and wholesale institutions' community development services nationwide if the institution has adequately met the needs of its assessment area(s).¹⁶

Servicing Program loans appears to meet the three criteria of a community development service. First, as described above, the Program is a community service that enables low- and moderate-income individuals to continue to work or to attend school. Servicing Program loans for [Inc]-member agencies, then, would have as its primary purpose community development. Second, servicing loans is related to the provision of financial services. And, finally, servicing Program loans would not be considered in the evaluation of the institution's retail banking services because loan servicing is typically not considered a

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 community development services. 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).

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

¹⁵ See 12 C.F.R. §§ 25.24(b), 25.25(e)(1), 25.27(f)(1)(i), 228.24(b), 228.25(e)(1), 228.27(f)(1)(i), 345.24(b), 345.25(e)(1), 345.27(f)(1)(i), 563e.24(b), 563e.25(e)(1), and 563e.27(f)(1)(i). See also 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).

¹⁶ 12 C.F.R. § 25.25(e)(2), 228.25(e)(2), 345.25(e)(2), and 563e.25(e)(2).

retail banking service. ¹⁷

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

¹⁷ Retail banking services include, for example, delivery systems, such as branches, ATMs, bank-by-mail programs, and banking by telephone and computer. See Supplementary Information, Community Reinvestment Act Regulations, 60 Fed. Reg. 22,156, 22,166 (May 4, 1995).