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

**Interpretive Letter #794
September 1997
12 U.S.C. 2901**

August 11, 1997

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Dear []:

This letter responds to your correspondence dated June 20, 1997, in which you requested that the four financial regulatory agencies (“the Agencies”) evaluate, under the CRA regulations the AAA Mortgage-Backed Security (MBS) investment products offered by your company.¹ Staff from the Agencies have reviewed your letter and supporting documentation and, for the reasons indicated below, have concluded that the type of investment you described would appear to meet the definition of a “qualified investment” under the CRA regulations.

Background

According to the information you supplied, [] (“the Company”) sells Fannie Mae, Freddie Mac and Ginnie Mae MBS’s backed by low- to moderate-income housing loans located within a financial institution’s assessment area(s). To meet an institution’s investment criteria, the Company pools loans made to individuals with low- to moderate-incomes in the low- to moderate-income census tracts within the institution’s assessment area(s). You state in your letter that the Company defines low- to moderate-income as eighty percent or less of the median income levels for each MSA within a financial institution’s

¹ Please note that this letter addresses only whether an investment in an MBS bond backed by home mortgage loans originated in the institution’s assessment area(s) would receive favorable CRA consideration. The letter does not address whether such an investment would be lawful. The CRA does not provide financial institutions with any independent authority to make loans or investments.

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assessment area(s), as defined by the Department of Housing and Urban Development (HUD).²

Discussion

The CRA regulations establish the framework and criteria by which the Agencies assess an institution's record of helping to meet the credit needs of the community. The regulations set out a number of different evaluation methods for examiners to use, depending on the business strategy and size of the institution under examination. Regardless of the performance test used to evaluate a regulated financial institution,³ an institution may receive positive consideration for making "qualified investments" that help meet the credit needs of the institution's assessment area(s) or a broader statewide or regional area(s).

The regulations define a "qualified investment" as "a lawful investment, deposit, membership share or grant that has as its primary purpose community development."⁴ "Community development" includes "[a]ffordable housing (including multifamily rental housing) for low- or moderate-income individuals."⁵ "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,

² Please note that the Agencies use the nonadjusted, 1990 census data to determine if a particular census tract is low- to moderate-income. To determine if *individuals* are low- to moderate-income, the Agencies use the adjusted HUD data.

³ See 60 Fed. Reg. 22,156, 22,161 (May 4, 1995). Examiners typically evaluate a large institution's CRA performance under the lending, investment and service tests. Examiners consider a large institution's 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 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)). Examiners may also consider qualified investments 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 *id.* at 54,659 (Q and A 5 addressing § __.26(a)). 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). 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).

⁴ See 12 C.F.R. §§ 25.12(s), 228.12(s), 345.12(s), and 563e.12(r).

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

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in the case of geography.”⁶ “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 geography.”⁷

Although investments in MBS’s generally are not qualified investments, investments in MBS’s designed primarily to finance community development generally are considered qualified investments. To qualify, housing-related bonds or securities must primarily address the affordable housing (including multifamily rental housing) needs of low-to-moderate income individuals.⁸

You stated that the Company tailors the investments to an institution’s requirements by backing the MBS’s with mortgages originated in low- to moderate-income census tracts within the institution’s assessment area(s). Furthermore, the borrowers of the underlying mortgages must have incomes that are 80% or less than the area median income. These steps taken by the Company thus ensure that low- and moderate-income individuals receive the underlying mortgages that back an MBS. The MBS bonds thus provide affordable housing with the meaning of subsections __.12(h)(1) and (4) of the regulations. Consequently, an institution that invests in MBS products with comparable characteristics may receive positive consideration for the investment as a qualified investment under the CRA regulations, provided the investment benefits the institution’s assessment area(s) or a broader statewide or regional area(s) that includes the institution’s assessment area(s).⁹ Please note, however, that in providing this general interpretive guidance, the Agencies are not endorsing any of the Company’s particular lending or investment products.

⁶ 12 C.F.R. §§ 25.12(n)(1), 228.12(n)(1), 345.12(n)(1), and 563e.12(m)(1).

⁷ 12 C.F.R. §§ 25.12(n)(2), 228.12(n)(2), 345.12(n)(2), and 563e.12(m)(2).

⁸ Community Reinvestment Act Interagency Questions and Answers Regarding Community Reinvestment, 61 Fed. Reg. 54,647, 54,653 (Oct. 21, 1996) (Q and A 2 addressing the meaning of “qualified investments” under §§ __.12(s) & 563e.12(r)).

⁹ For a wholesale or limited purpose institution that has adequately addressed the needs of its assessment area(s) or a broader statewide or regional area that includes the institution’s assessment area(s), a qualified investment may benefit areas outside the assessment area(s). See 12 C.F.R. §§ 25.25(e)(2), 228.25(e)(2), 345.25(e)(2), and 563e.25(e)(2).

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

Sincerely,

/s/

Michael Bylsma
Director
Community and Consumer Law
Office of the Comptroller of the Currency