



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

October 24, 2003

Interpretive Letter #983
February 2004
12 USC 2901

Subject: [*the "Fund"*]

Dear []:

This letter responds to your inquiry whether a proposed investment by [] (Bank) would be considered a qualified investment under the Community Reinvestment Act (CRA). You also asked whether the investment would be considered a complex and innovative investment of the type not routinely provided by private investors that is responsive to community development needs. For the reasons discussed below, it appears that the proposed investment would be considered a qualified investment for CRA purposes. Further, the Bank should receive qualitative consideration for its investment because of the Bank's involvement in helping to structure the new investment fund.

Description of the Bank's Proposed Investment

The Bank proposes to invest in [] (the "Fund"). The managing member of the Fund will be [] (*Co*), a nonprofit financial intermediary with a workforce development mission, the majority of whose board appointments are controlled jointly by the [*AA*] and the [] (*BB*). The Fund's sole activity will be to invest in an operating company, [] (the "Company").

The Company will be structured as a limited liability company whose managing member will be a wholly owned nonprofit subsidiary of the [] (NCC) of [*city, state*], a community development corporation. The Company will employ individuals, a majority of whom are low- and moderate-income, and who are expected to qualify for various federal employment tax credits, including the Work Opportunity Credit, the Welfare-to-Work Credit, and the Renewal Community Employment Credit. These Company employees will be assigned to provide labor hours at NCC and other [*state*]-area institutions on a temporary and permanent basis under contract to such institutions. Employees will be hired to perform various types of work, including clerical, retail, security, and building maintenance. During the term of

the Bank's proposed investment, the Company, which will be a start-up company, is projected to have less than \$11.5 million in annual receipts (the current Small Business Administration definition of a small business in the Employee Leasing Services category).

The Bank's investment will finance the employment of the Company's employees and the provision of ancillary services to facilitate employees' continued employment, such as job training, medical insurance, and employee assistance programs (e.g., counseling and referrals intended to enable employees to overcome job-threatening obstacles).

The Bank has invested staff time and substantial funds in analyzing and structuring this investment. The Bank also asserts that this investment is the first of its kind in the country. The Bank's financial return on its investment is expected to come primarily in the form of tax benefits from the federal employment tax credits mentioned above. Further, the proposed investment will benefit the Bank's assessment area, which includes [*city, state*].

Discussion

Under the CRA regulations, a "qualified investment" is "a lawful investment, deposit, membership share, or grant that has as its primary purpose community development."¹ "Community development" is defined to include:

- Community services targeted to low- or moderate-income individuals; or
- Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's (SBA's) Development Company or Small Business Investment Company (SBIC) programs (13 CFR 121.301) or have gross annual revenues of \$1 million or less.²

Through the "Interagency Questions and Answers Regarding Community Reinvestments"³ (Qs & As), the agencies have provided additional guidance about the types of investments that are considered qualified investments. Among the Qs & As relevant to this proposed investment is §§ __.12(h)(3) & 563e.12(i)(3) – 1. This Q & A states, in pertinent part, that an investment intended to promote economic development by financing small businesses is a qualified investment if it meets both a size test and a purpose test. The investment meets the size test if it will finance entities that either meet the size eligibility standards of the SBA's Development Company or SBIC programs or have gross annual revenues of \$1 million or less. To meet the purpose test, the activity must promote economic development. An investment is considered to promote economic development if it supports permanent job creation, retention, and /or improvement for persons who are currently low-or moderate-income, or supports permanent job creation retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment.

¹ 12 C.F.R. § 25.12(s).

² 12 C.F.R. § 25.12(h)(2)-(3).

³ 66 Fed. Reg. 36,620 (July 12, 2001)

In this case, the Bank will invest in the Fund. The Bank's investment will help to finance the Company. The Company is projected to meet the size requirements referenced above during the term of the Bank's investment. In addition, the objective of the Company is to provide employment to low- and moderate-income individuals (insofar as they qualify for the Work Opportunity Credit (26 U.S.C. § 51) and/or the Welfare-to-Work Credit (26 U.S.C. § 51A)) and individuals residing in the federally designated [*state*] Renewal Community (who are eligible for the Renewal Community⁴ Employment Credit (26 U.S.C. § 1400H)). It appears, therefore, that the Bank's investment will promote economic development by financing a small business, within the meaning of the CRA regulation.

In addition, Q & A §§ __.12(s) & 563e.12(r) – 4 states that an example of a qualified investment is an investment in an organization supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, job training programs that enable people to work. In addition to providing employment to low- and moderate-income individuals, the Company will provide job training and other employee-assistance programs to its employees. The Bank's investment in the Fund will help the Company fund such training and programs, which may be considered community services targeted to low- and moderate-income individuals. This also leads to a conclusion that the Bank's investment would be a qualified investment under the CRA regulation.

A Bank may also receive "qualitative" consideration for certain qualified investments if such investments are innovative or complex, they are responsive to credit and community development needs, and private investors do not routinely provide them. In this case, in order to be designated a Renewal Community, unemployment in the [*state*] area was at least one and one-half times higher than the national average. In addition, according to the information you provided, NCC has identified job creation and workforce development as an area need because relatively few private sources are available to fund the employment of people with limited job opportunities and experience. [*Co*], the [*AA*], and [*BB*] have worked together to structure this investment, and the Bank has been assisting them with their efforts. The Bank's investment appears to be responsive to the community development needs of the area. Because it appears to be the first fund of its type, it also is innovative and has not been routinely provided by private investors. Further, because of the Bank's involvement with the structuring of the investment, the investment by the Bank may be considered complex.

⁴ A community that is eligible for designation as a Renewal Community must be an area of pervasive poverty, unemployment, and general distress. At least 70 percent of the households living in the area must have incomes below 80 percent of the median income of households within the jurisdiction of the local government and the unemployment rate must be at least one and one-half times the national unemployment rate. For further information about Renewal Community requirements, see 26 U.S.C. § 1400E.

I trust this letter responds to your inquiry. If you have further questions, please contact Margaret Hesse, an attorney on my staff, or me at (202) 874-5750.

Sincerely,

-signed-

Michael S. Bylsma
Director
Community and Consumer Law Division