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

**Interpretive Letter #810
January 1998
12 U. S. C. 2901**

December 12, 1997

Dear []:

This letter responds to your inquiry about whether financial institutions that invest in the City of [] Middle Income Housing Down-payment Assistance Initiative would receive favorable consideration when the institutions' Community Reinvestment Act (CRA) performance is evaluated by their regulators. As you may know, the four financial institution regulatory agencies issue interagency CRA interpretive letters for the purpose of providing consistent guidance to our examiners, financial institutions, and the public. The letters are intended to provide broadly applicable guidance and not to endorse any specific projects or products.

In order to provide broadly applicable guidance as described above, this letter will focus on how an examiner would determine whether an investment in the initiative or similar program would receive favorable consideration under the CRA regulations.

The four federal bank and thrift regulatory agencies promulgated substantially similar CRA regulations on May 4, 1995.¹ The regulations of the four agencies are substantively identical. Therefore, staff from all of the agencies have considered your inquiry and concur in the opinions expressed in this letter.

Background

In your letter, you state that the City of [] is introducing a new program to provide down payment assistance to middle-income families and individuals choosing to purchase homes in middle-income housing developments in targeted areas within the city of []. The program is designed to provide approximately 400 loans at \$10,000 per loan. The loans

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

will be second mortgages on the property, the interest rate will be competitive with the market rate, and will be financed through the issuance of bonds by city agencies. These developments are in city-targeted areas located within and adjacent to low- and moderate-income areas in the city. According to the information included with your letter, the purpose of this program is to “cultivate middle income home ownership within the City....”

Discussion

As a general matter, the CRA regulations establish the framework and criteria by which the regulatory agencies assess an institution’s record of helping to meet the credit needs of its 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,² 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.”³ “Community development” includes “[a]ctivities that revitalize or stabilize low- or moderate-income geographies.”⁴ “Low income” means “an individual income that is less than 50 percent of the

² See 60 Fed. Reg. 22,156 (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. §§ 25.26(a)(1), 228.26(a)(1), 345.26(a)(1) and 563e.26(a)(1); see also Interagency Questions and Answers Regarding Community Reinvestment [hereinafter Qs and As], 62 Fed. Reg. 52,119 (Oct. 6, 1997) (Q and A 1 addressing § 25.26(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 Qs and As at 52,120 (Q and A 5 addressing § 25.26(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).

³ See 12 C.F.R. §§ 25.12(s), 228.12(s), 345.12(s), and 563e.12(r).

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

area median income, or a median family income that is less than 50 percent, in the case of a geography.”⁵ “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 a geography.”⁶

In determining whether investments in projects, such as the City of [] Initiative, are qualified investments, examiners will look to see whether the initiative is part of a governmental plan to revitalize or stabilize a low- or moderate-income area, or otherwise evidences governmental support for revitalization or stabilization of low- or moderate-income geographies. Investments in higher- or middle-income housing programs in distressed areas would qualify as qualified investments if these loans or investments are part of a governmental plan, or there is other evidence of governmental support for revitalization or stabilization efforts, and the activity would not significantly disadvantage or primarily have the effect of displacing low- or moderate-income individuals and communities.

You stated in your letter that the targeted areas in the City of [] Middle Income Housing Down-payment Assistance Initiative include low- to moderate-income areas and areas adjacent to low- and moderate-income areas. Examiners may give favorable CRA consideration to community development activities outside of low- and moderate-income areas that, among other things, stabilize or revitalize particular low- or moderate-income areas. Activities outside of low- or moderate income areas also may receive favorable CRA consideration if, for example, those activities are part of a plan to revitalize or stabilize the low- and moderate-income areas.⁷

I trust that this letter is responsive to your request. If you have any additional questions, please feel free to contact me or Beth Knickerbocker, an attorney on my staff at (202) 874-5750 if you have further questions.

Sincerely,

/s/

Michael S. Bylsma
Director
Community and Consumer Law Division

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

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

⁷ See Qs and As, 62 Fed. Reg. 52,111 (Oct. 6, 1997) (Q and A 2 addressing § .12(h) & 563e.12(g) (definition of Community development)).

