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

*Interpretive Letter #701
February 1996
12 U.S.C. 2901*

January 31, 1996

[]

Dear []:

I am responding to your letter to Stephen Cross, Deputy Comptroller of the Currency, of December 5, 1995, in which you asked for confirmation that financial institutions that provide grants to the [] Clinic will receive positive consideration under the Community Reinvestment Act (CRA) regulations. As discussed below, this type of grant would receive positive consideration under both the old and new CRA regulations.

As you probably know, the four bank and thrift regulatory agencies finalized new CRA regulations on May 4, 1995. See 60 Fed. Reg. 22,156 (May 4, 1995). The regulations of the four agencies are substantively identical. Therefore, staff from all of the agencies have considered the issue you raised, and they concur in the opinions expressed in this letter.

Because the new CRA regulations become effective over a period of time, depending on the type of institution, both the old and new CRA regulations are currently in effect. This letter, therefore, discusses whether an institution would receive positive consideration for a grant under both the old and new CRA regulations.

According to the information that you provided, the [] (Clinic) is a tax-exempt, non-profit, public benefit organization providing free health care for low-income individuals and families. In 1994, the Clinic served 10,873 different patients. Of these patients, 84.1 percent were at or below the poverty level. None of the patients were insured under private health insurance policies.

Old CRA Regulation

The old CRA regulations list twelve assessment factors that are used in assessing CRA performance. See 12 C.F.R. §§ 25.7, 228.7, 345.7, and 563e.7. At least one of these factors provides a basis for examiners to give consideration to an institution's investment in the Clinic if it serves the institution's delineated community. Twelve C.F.R. §§ 25.7(h), 228.7(h), 345.7(h), and 563e.7(h) provide that the agencies will consider an institution's "participation, including investments, in local community development and redevelopment projects or programs." The term "community development" is not defined.

In 1993, the Federal Financial Institutions Examination Council prepared interagency Questions and Answers regarding Community Reinvestment (Qs and As) to provide general guidance about the old CRA regulation. See 58 Fed. Reg. 9176 (Feb. 19, 1993). Although the Qs and As do not address a contribution to a health care clinic directly, two of the Qs and As are relevant. The answer to Question 17, which addresses whether any activities other than lending will be considered in the CRA assessment, states:

The financial supervisory agencies will consider the extent to which an institution's activities foster local community revitalization. For example, the agencies will consider the institution's purchase of state or municipal bonds or involvement through investment or other contributions in a local community development project.

58 Fed. Reg. at 9179.

The answer to Question 18 discusses specific examples of debt and equity investments and other services and activities, besides direct lending, that financial institutions may consider in meeting obligations and responsibilities under the CRA. One example is:

Investment in the stock of a public purpose corporation, either for-profit or nonprofit, chartered to carry out activities to benefit low- and moderate-income areas and residents or small businesses.

Id. Although this example addresses an equity investment in a public purpose corporation, a grant to such a corporation would be considered similarly.

In sum, a contribution to the Clinic would receive positive consideration under the old CRA regulations.

New CRA Regulations

The new CRA regulations provide a more detailed framework for evaluating an institution's CRA performance. The new rule sets out a number of different tests for examiners to use, depending on the type of activity and the size and type of institution.

Regardless of the test used by examiners, financial institutions can receive positive consideration for making “qualified investments.” 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 60 Fed. Reg. at 22,181, 22,192, 22,204, and 22,215 (to be codified at 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 60 Fed. Reg. at 22,182, 22,193, 22,205, and 22,216 (to be codified at 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 60 Fed. Reg. at 22,188, 22,200, 22,211, and 22,223 (to be codified at 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 60 Fed. Reg. at 22,182, 22,193, 22,204, and 22,215 (to be codified at 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 60 Fed. Reg. at 22,183, 22,194, 22,205, and 22,216 (to be codified at 12 C.F.R. §§ 25.27(f)(1), 228.27(f)(1), 345.27(f)(1), and 563e.27(f)(1)) (emphasis added).

“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.

60 Fed. Reg. at 22,180, 22,191, 22,202, and 22,213 (to be codified at 12 C.F.R. §§ 25.12(s), 228.12(s), 345.12(s), and 563e.12(r)).

“Community development” is defined to include:

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

60 Fed. Reg. at 22,179, 22,190, 22,202, and 22,212 (to be codified at 12 C.F.R. §§ 25.12(h)(2), 228.12(h)(2), 345.12(h)(2), and 563e.12(g)(2)).

A grant to the Clinic has as its primary purpose community development because the Clinic provides community services targeted to low- or moderate-income individuals. See 60 Fed. Reg. at 22,159 (supplementary information stating “community development includes community- or tribal-based child care, educational, *health*, or social services targeted to low- or moderate-income persons”) (emphasis added). Therefore, examiners would give positive consideration to a grant to the Clinic as a qualified investment under any of the new performance tests and standards in the new CRA regulations.

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 an official commentary to provide additional guidance for 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/

Matthew Roberts
Director
Community and Consumer Law Division
Office of the Comptroller of the Currency