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

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**Interpretive Letter #780  
May 1997  
12 U.S.C. 2901**

May 5, 1997

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Dear [     ]:

This letter responds to your correspondence regarding consideration under the Community Reinvestment Act (CRA) regulations of investments by financial institutions in securities of a community reinvestment trust (Trust). The Trust ultimately provides funds for non-profit organizations to acquire affordable multifamily housing properties, senior congregate care and housing facilities, and educational facilities. As you know, the CRA regulations establish the framework and criteria by which the four bank and thrift regulatory agencies (Agencies) assess an institution's record of helping to meet the credit needs of its community. The Agencies have promulgated substantively identical CRA regulations.<sup>1</sup> Therefore, staff from all of the Agencies (Staff) have considered the issues you raise and concur with the opinions expressed in this letter.

As explained in your letter and subsequent telephone conversations with Yvonne McIntire of my staff, you are seeking to have financial institutions purchase from the Trust securities that are secured by non-investment grade tax-exempt bonds (Bonds). The proceeds of the Bond issues will be used to allow non-profit, and in some cases for-profit, organizations to acquire affordable housing projects, senior congregate care, and educational facilities. You state that although the Trust would invest in Bonds issued by state and local authorities (including housing authorities) throughout the country, funds provided by a particular institution would be invested in bond issues the proceeds of which are used to acquire properties in the institution's assessment area. In addition, you state that housing projects for which the proceeds of the Bonds will be used will be maintained and operated as "project[s] for residential rental property," within the meaning of Sections 142(d) and 145 of the Internal Revenue Code.

You have asked: (1) whether an institution that invests in the Trust will be considered to have

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<sup>1</sup>12 C.F.R. parts 25, 228, 345, and 563e.

invested within its assessment area for purposes of the CRA regulations; (2) whether an institution's investment in the Trust would qualify for favorable consideration under the CRA regulations' investment test; and (3) whether the Trust's bond investments could be treated as the functional equivalent of making loans, thereby allowing the institution's investment to qualify for consideration under the CRA regulations' lending test.

For the reasons stated below, we conclude that: (1) an institution investing in the Trust will be considered to have invested within its assessment area for purposes of the CRA regulations;

(2) an institution may receive favorable treatment for funds invested in the Trust under the investment test if :

(a) the projects in which the proceeds of the Bonds are invested either are eligible for low-income housing tax credits or are qualified residential rental projects for purposes of 26 U.S.C. §§ 142 and 145; or

(b) the primary purpose of the Bonds is to provide affordable housing, senior congregate care, or educational services to low- and moderate-income individuals; and

(3) the purchase of Trust securities would not be eligible for consideration under the lending test.

### **Assessment Area**

With respect to your first question,<sup>2</sup> you state that funds provided by a particular institution would be earmarked for projects located in the institution's assessment area. Pursuant to the CRA regulations, a qualified investment must benefit an institution's assessment area or a broader statewide or regional area that includes the institution's assessment area(s) to receive favorable consideration under the CRA regulations.<sup>3</sup> Because the funds an institution invests in the Trust will be earmarked for projects located in the institution's assessment area(s), the investment would be considered to be within its assessment area(s) for purposes of the CRA regulations.

### **Qualified Investments**

With respect to your second question, you state that funds invested by financial institutions in

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<sup>2</sup>Your questions focus on whether an institution's investments in the Trust will receive favorable consideration under the investment and lending tests. These tests are applicable primarily to large retail institutions. Our response, therefore, only addresses consideration under the assessment criteria applicable to large retail institutions.

<sup>3</sup>12 C.F.R. §§ 25.23(a), 228.23(a), 345.23(a), and 563e.23(a); *see also* Interagency Staff CRA Opinion Letter from Matthew Roberts dated April 2, 1996 (designated as OCC Interpretive Letter No. 715) (attachment #1).

the Trust ultimately would be used to acquire properties for affordable housing projects, senior congregate care facilities and educational facilities.

#### A. Bonds for Affordable Housing Projects

Generally, qualified investments are defined as lawful investments, deposits, membership shares or grants that have as their primary purpose community development.<sup>4</sup> Pursuant to the Interagency Questions and Answers Regarding Community Reinvestment (Qs and As), the term “qualified investment” includes projects eligible for low-income housing tax credits.<sup>5</sup> Consequently, investments by the Trust in Bonds for affordable housing projects that are eligible for low-income housing tax credits would receive favorable treatment under the CRA regulations.

However, you have stated that the majority of the properties in which the proceeds of the Bonds will be invested will be owned by non-profit organizations that will not pursue low-income housing tax credits. According to the Qs and As, the term “qualified investment” also includes an investment in “state and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development.” The Qs and As do not describe what is meant by the phrase “support affordable housing.” You state that the housing projects for which the proceeds of the Bonds will be used will be “maintained and operated as ‘project[s] for residential rental property,’ within the meaning of Sections 142(d) and 145 of the [Internal Revenue] Code.”<sup>6</sup> We note that the requirements regarding occupancy set forth in sections 142(d) and 145 are the same as those for low-income housing tax credits (i.e., either 20% or more of the units must be set aside for individuals whose income is 50% or less of the area median income or 40% or more of the units must be set aside for individuals whose income is 60% or less of the area median income).<sup>7</sup> Therefore, the Staff hereby concludes that investment bonds for qualified residential rental projects pursuant to 26 U.S.C. §§ 142 and 145 are qualified investments for purposes of the CRA regulation. Consequently, institutions will receive favorable consideration for investments in the Trust to purchase Bonds issued for affordable housing if the Bonds are for qualified residential rental projects.

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<sup>4</sup>12 C.F.R. §§ 25.12(s); 228.12(s); 345.12(s); and 563e.12(r) (emphasis added).

<sup>5</sup>See 61 Fed. Reg. 54647, 54653, Q/A 4 addressing § § \_\_\_\_\_.12(s) & 563.12(r).

<sup>6</sup>Sections 142 and 145 describe certain types of bonds the interest upon which is exempt from federal taxation. 26 U.S.C. §§ 142(d) and 145(d). Among the bonds described in sections 142 and 145 are bonds for “qualified residential rental projects” and “qualified [26 U.S.C. §] 501(c)(3) bonds.” *Id.* Qualified 501(c)(3) bonds that are not bonds for qualified residential rental projects are not required to meet occupancy requirements based on income. Those qualified 501(c)(3) bonds would be required to meet the definition of community development in the CRA regulation in order to be considered favorably under CRA. See discussion in sections B and C, *infra*.

<sup>7</sup>26 U.S.C. §§ 38 and 42(g).



## B. Bonds for Senior Congregate Care and Housing Facilities<sup>8</sup>

As stated earlier, qualified investments must have as their primary purpose community development. Community development includes, among other things: (1) affordable housing for low- and moderate-income individuals; and (2) community services targeted to low- and moderate-income individuals.<sup>9</sup> 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 in the case of a geography.”<sup>10</sup> 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 percent and less than 80 percent in the case of a geography.”<sup>11</sup>

Senior and congregate care facilities serve elderly persons of all income levels. You state that the bonds in which the Trust will invest also will be used “to preserve the stock of existing congregate care and housing facilities whose occupants are elderly people.” However, you could not determine what, if any, percentage of the units would be for low- and moderate-income individuals. Investments in the Trust for the purchase of Bonds to provide senior congregate care and housing facilities will receive favorable consideration under the CRA regulations only if those facilities will provide affordable housing or community services to low- or moderate-income elderly persons. Consequently, the Trust should determine the income levels of the individuals to be served by the congregate care and housing facilities financed by the Bonds to determine whether the Bonds purchased by the Trust would meet the CRA definition of community development.

## C. Treatment of Investments in Bonds for Educational Facilities

Community development also includes educational services targeted to low- and moderate-income individuals.<sup>12</sup> The Staff have determined that investments in entities that provide educational services that enable low- and moderate-income individuals to continue to work or

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<sup>8</sup>Senior housing facilities that are qualified residential rental projects would receive favorable consideration under the CRA regulations as noted above in the discussion on affordable housing. This section pertains only to congregate care and senior housing facilities that are not qualified residential rental property.

<sup>9</sup>12 C.F.R. §§ 25.12(h)(2); 228.12(h)(2); 345.12(h)(2) and 563e.12(g)(2). Community services include health services. *See* Interagency Staff CRA Opinion Letter from Matthew Roberts dated January 31, 1996 (designated as OCC Interpretive Letter No. 701) (attachment #2).

<sup>10</sup>12 C.F.R. §§ 25.12(n)(1); 228.12(n)(1), 345.12(n)(1) and 563e.12(m)(1).

<sup>11</sup>12 C.F.R. §§ 25.12(n)(2); 228.12(n)(2), 345.12(n)(2) and 563e.12(m)(2).

<sup>12</sup>Qs and As, 61 Fed. Reg. 54647, 54650, Q/A 1, addressing § \_\_\_\_\_.12(h) and 563e.12(g).

to attend school to enhance their employment opportunities constitute qualified investments.<sup>13</sup> You state that the Bonds in which the Trust will invest also will be used for educational facilities. However, you do not indicate whether or to what extent the facilities will be used to provide such services to low- or moderate-income individuals. Nor do the provisions of the Internal Revenue Code governing issuance of bonds for this purpose require that the educational facilities serve low- and moderate-income individuals. Institutions that invest in the Trust will receive favorable treatment under the CRA regulations for investments in Bonds for educational facilities if, for example, the primary purpose of the facilities is to enable low- and moderate-income individuals to continue to work or to attend school to enhance their employment qualifications.

### **The Lending Test**

With regard your third question, you state that financial institutions would purchase securities from the Trust that are secured by the Bonds. In your letter, you appear to be suggesting that the financial institutions would be investing in an entity that, through third party bond financing, indirectly makes available loans for affordable housing and senior congregate care and housing facilities and, thus, should be entitled to claim a share of those loans proportionate to their investment.

Pursuant to the CRA regulations, a large retail institution is evaluated, in part, on the basis of its record of helping to meet the credit needs of its assessment area(s) through its lending activities.<sup>14</sup> Under the lending test, community development loans originated by a third party in which an institution has invested will be considered as loans made by the institution, at the institution's option, subject to certain limitations.<sup>15</sup> Generally, the Staff consider an institution to have "invested" in a third party within the meaning of this provision when the institution has made an equity or equity-like investment in the third party.<sup>16</sup> The Staff have concluded that securities backed by loans, such as mortgage-backed securities or similar products, are not equity or equity-like investments in the third party that originates the loans. The securities in the Trust, in this instance, are asset-backed securities--similar to mortgage-backed securities. Consequently, an institution that purchases these securities has not made an equity (or equity-like) investment in the Trust entity and, therefore, would not receive favorable consideration under the lending test for community development loans, if any, that are

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<sup>13</sup>See Interagency Staff CRA Opinion Letter from Michael S. Bylsma dated March 14, 1997 (designated as OCC Interpretive Letter No. 773) (attachment #4).

<sup>14</sup>12 C.F.R. §§ 25.22(a), 228.22(a), 345.22(a) and 563e.22(a).

<sup>15</sup>12 C.F.R. §§ 25.22(d), 228.22(d), 345.22(d) and 563e.22(d).

<sup>16</sup>Qs and As, 61 Fed. Reg. at 54657, Q/A 1, addressing § \_\_\_\_ .22(d); *see also* Interagency Staff CRA Opinion Letter from Matthew Roberts dated June 27, 1996 (designated as OCC Interpretive Letter No. 727) (attachment #5).

originated or purchased by the Trust.

I trust that this letter has been responsive to your inquiry. If you have any further questions concerning this matter, please feel free to contact me or Yvonne McIntire of my staff at (202) 874-5750.

Sincerely,

/s/

Michael Bylsma  
Director  
Community and Consumer Law Division