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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 #801  
October 1997  
12 U.S.C. 2901**

September 11, 1997

Dear [ ]:

This responds to your letter dated January 31, 1997,<sup>1</sup> in which you inquired about the applicability of the Community Reinvestment Act (CRA) regulations to a financial institution's commitment to invest in a partnership that invests in low-income housing. Specifically you asked whether a wholesale or limited purpose financial institution may receive CRA consideration for its entire investment at the time the commitment is made, rather than at the time of, and only for the amount of, each cash call. Your question raises the following two issues:

- (1) Whether the timing of payments of a qualified investment will affect the amount of consideration received; and
- (2) How examiners will evaluate an institution's qualified investment in a partnership with nationwide investments.

The four federal financial institution supervisory agencies ("the Agencies") have promulgated substantively identical CRA regulations. Therefore, staff from all of the agencies have considered the issues you raised and they concur in the opinions expressed in this letter.<sup>2</sup>

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<sup>1</sup> I apologize for the delay in responding to your letter. As I have indicated during previous telephone conversations with you, this delay resulted from the efforts of the federal financial institution supervisory agencies to coordinate this response with another response letter, described *infra*, that raised similar questions.

<sup>2</sup> The Agencies have received other inquiries regarding these general issues and have responded to them in another interagency letter. See Interagency Staff CRA Opinion Letter from Michael Bylsma, at II.B. (Sept. 11, 1997) (designated as OCC Interpretive Letter No. 800) (copy enclosed). Although this letter cites to the performance criteria under the investment test, the discussion also applies to evaluations of qualified investments under the community development test, which contains the same performance criteria. See 12 C.F.R. §§ 25.25(c), 228.25(c), 345.25(c), and 563e.25(c).

## I. BACKGROUND

According to your letter, [ ] is a general partner in limited partnerships that invest in low-income housing projects and receive tax credits in return (“Partnerships”). Corporations, including wholesale or limited purpose financial institutions,<sup>3</sup> become limited partners by entering subscription agreements to commit funds for low-income housing projects in return for federal Low Income Housing Tax Credits. The subscription agreements contain “unconditional” and “irrevocable” commitments by the investors to fund the investment over a number of years. The pay-in schedule for each investor varies according to the project’s needs, as determined by [ ].

You indicated that [ ] generally requires investors to pay the committed equity over two years. The subscription agreement is the sole document that binds the investor. If an investor wants to finance an investment over a longer period of time, [ ] requires the investor to sign a promissory note, in addition to the subscription agreement, and deliver the note and agreement to the Partnership. In either case, the Partnership has received an “absolute and unconditional” obligation from the investor to pay its equity investment. Pursuant to the subscription agreement, the Partnership is authorized to use the promissory note (or the subscription agreement itself in the case of two-year obligations) as collateral to obtain a bridge loan for the entire amount of the investment. If a limited partner fails to pay any portion of its equity obligation, the limited partner shall be in default of the subscription agreement and the Partnership may demand full payment of the entire obligation immediately and initiate legal proceedings to collect the obligation.

## II. DISCUSSION

### A. How Examiners Evaluate Investments in a Community Development Fund

You inquired whether an institution’s pay-in schedule for an equity investment in a community development fund would affect the timing and amount of CRA consideration received by the institution. As explained more fully in section II.B. of the enclosed interagency letter, the regulations do not favor investments that are immediately funded over investments with a binding up front commitment that are funded over a period of time. Under either of these investment strategies, institutions making the same dollar amount of investments over the same number of years, all other performance criteria being equal, would receive the same level of consideration. In response to your question, factors such as the pay-in schedule under a binding commitment will be considered relevant to the capacity of the institution to make new investments, as part of the context for evaluating an institution’s CRA performance.

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<sup>3</sup> You indicated that [ ] does not enter any tax credit partnerships with retail financial institutions. Our response is based on that representation.

B. Qualified Investments By Wholesale or Limited Purpose Institutions Must Meet Geographical Requirements

In evaluating a qualified investment by a wholesale or limited purpose institution outside the institution's assessment area (or broader statewide or regional area that includes the assessment area), examiners would first consider whether the institution has adequately addressed the needs of its assessment area(s). As explained in section II.C. of the enclosed interagency letter, a wholesale or limited purpose institution is not required to help meet the credit needs of a broader statewide or regional area; however, qualified investments in a broader statewide or regional area that includes the institution's assessment area are favorably considered in the evaluation of an institution's performance in its assessment area(s). Examiners that find a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s) will give favorable consideration to qualified investments, community development loans, and community development services by that institution nationwide.<sup>4</sup>

You indicated that investors in a partnership pool their money into a national fund for the purpose of maintaining a diversified portfolio of projects. You also indicated that [ ] does not enter limited partnerships with retail financial institutions; only wholesale or limited purpose financial institutions may become limited partners. Consequently, if a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s) as explained above, the institution may invest in a nationwide fund without targeting its investment.

**III. CONCLUSION**

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 Division  
Office of the Comptroller of the Currency

Enclosures

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<sup>4</sup> See Interagency Staff CRA Opinion Letter from Michael Bylsma, at II.B. (Dec. 23, 1996) (designated as OCC Interpretive Letter No. 764) (copy enclosed).