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AFFORDABLE HOUSING • TAX CREDIT COALITION •

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Manager, Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
Attention: Docket No.2000-44
1700 G Street, NW
Washington DC 20552

Dear Sir/Madam:

The Affordable Housing Tax Credit Coalition is composed of syndicators, developers, financiers, non-profit and public entities active in producing affordable housing utilizing the Low Income Housing Tax Credit (LIHTC) authorized by Section 42 of the Internal Revenue Code. We submit these comments in response to several invitations in the proposed regulations regarding appropriate exemptions from the Section 711 reporting requirements.

As a matter of background, Congress created the LIHTC in the Tax Reform Act of 1986 to stimulate the production of affordable housing. The amount of the credit is capped and its allocation is regulated by state tax credit agencies, usually the housing finance agency within the state. The LIHTC has produced over a million affordable units in its 13 years. The Treasury Department and the Internal Revenue Service oversee the LIHTC as do the state allocating agencies.

Generally LIHTC projects are owned by limited partnerships; the developer is the general partner and investors seeking the advantage of the LIHTC are the limited partners, either directly or through an upper tier limited partnership. Syndicators purchase limited partnership interests in a project from the developer, bundle them with other such interests in other projects and then sell interests in the resulting pool to the ultimate investor. At this time, virtually all LIHTC investors are corporations including many financial institutions.

There is significant competition between the syndicators to both purchase limited partnership interests and in the resale to the ultimate investors. The price to the investor, such as a financial institution, is set in arms length negotiations among very sophisticated parties well aware of the going market price for the product. Indeed, the arms-length market price paid by the financial institution for the interests in the tax credit partnerships is analogous to loans "at rates not substantially below market rates" which are exempted from Section 711 coverage.

In light of the above discussion, it is our view that this is not the type of transaction that Congress intended to reach in Section 711. Generally, the offering terms, price and legal documentation for tax credit investments is similar whether the investor is a bank or non-bank and CRA benefits are not usually the primary benefit of the investment. However, as the preamble to the proposed regulations recognize, Section _.2(b)(2)(iii)(d) could be viewed as covering these transactions as a syndicator's offering documents may contain some reference to CRA eligibility of the investment and CRA may come up in the discussions of the parties. Determining eligibility for CRA purposes remains the responsibility of the investor, if they happen to be banks (as opposed to non-bank investors); syndicators and other entities involved in LIHTC transactions are not involved in CRA eligibility analysis for investors, but they do have legal obligations to disclose CRA requirements to investors. Accordingly, general statements or discussions of eligibility of an investment for CRA should be exempted and not considered a CRA contact under the regulations.

Likewise, the preamble asks whether arms length sale of loans in the secondary market should be exempted from the reporting requirements. For the reasons set forth above, we answer in the affirmative and the same exemption for loans should be applied to investments in tax credit limited partnerships.

In summary, we believe that the requested exemptions should be granted so that a well functioning commercial market which makes possible the equity financing of vitally needed affordable housing is not burdened with reporting requirements directed to entirely different situations.

Sincerely,

Richard P. Richman
President

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