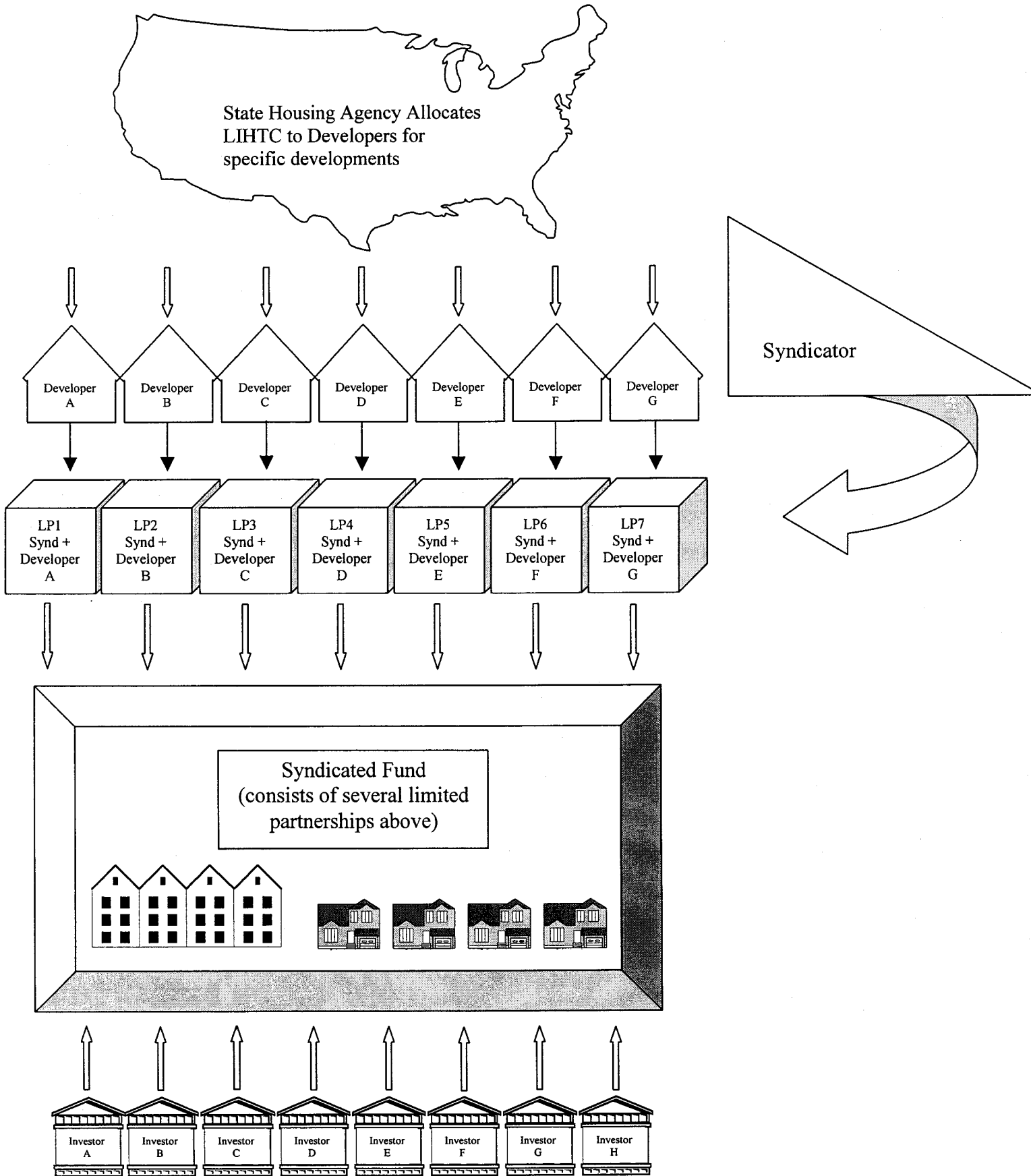


HOUSING CREDIT INVESTMENT STRUCTURE





The Affordable Housing Tax Credit Coalition (AHTCC) is comprised predominantly of syndicators - entities who put together financing for low-income housing projects. Collaborating with AHTCC are the National Association of State and Local Equity Funds (NASLEF), representing non-profit counterparts to the AHTCC's members, and the National Leased Housing Association (NLHA), whose members primarily are property developers. The Affordable Housing Investors Council, representing investors, is an AHTCC member, but it does not participate in policy-making activities.

Together the groups represent essentially all non-governmental parties involved in constructing and financing low-income housing built with the Low-Income Housing Tax Credit (LIHTC). More important, these groups provide the equity capital raised from large and publicly traded corporate investors that is key to the success of this public/private partnership.

For many years, pursuant to federal law, HUD has required that any individual "participating" in a project using HUD financing fill out HUD Form 2530. On Form 2530, individual participants are required to list all HUD properties in which they have previously participated. This is so HUD can make sure it is not doing business with bad actors - people who have not kept properties in good condition in the past or who otherwise have not lived up to their obligations under HUD programs.

HUD recently switched to an electronic 2530 filing system called APPS which attempts to provide considerable potential benefit to filers. Once all of a filer's previous HUD interactions have been entered, it should be quite simple to add information only for the new property in which the filer is seeking to participate.

However, three problems have been identified:

- (1) APPS has many technical problems causing it to not work very well - filers have had numerous problems navigating the application process;
- (2) APPS forms cannot be completed (i.e., users cannot advance to the next screen) without providing information applicants previously could choose not to provide in paper form, including sensitive personal information such as social security numbers of corporate board members and officers; and
- (3) too many entities are required to file.

With regard to the third issue, HUD is requiring that passive investors perform 2530 APPS filings, even though they have neither direct involvement in the property or HUD's financing, nor could they ever take control of the property as an owner. They simply enter into partnerships to invest in the Housing Tax Credits.

The following describes the role of investors in the LIHTC program. Investors - typically major banks, insurance companies, and government sponsored enterprises such as Fannie Mae and Freddie Mac - put money into syndicated funds established by syndicators in exchange for a flow of Housing Tax credits. The syndicators then provide tax credit equity capital from the funds to developers of low-income housing properties, using a Limited Partnership structure, so the properties can be built. Requirements under the partnership are that developers are responsible for operating the properties under the compliance measures of Section 42 of the U.S. Tax Code.

Should they default under the terms of the partnership agreement, the syndicator may be required to replace the developer/general partner and operate the property.

Under no circumstances are these passive investors in a position to replace the developer/general partner and operate the property. This leads to the question - why is HUD forcing them to report and how is this affecting the investment levels of these passive investors?

HUD's practice has been to require investors to file a 2530 form to show their previous participation each time they want to invest in a property, even though they have no control over the property and can not possibly end up in a position of being a "bad actor." Nevertheless, individuals from large publicly traded companies - i.e., bank Presidents, Chief Executive Officers, board members, and even executives of corporate affiliates that have nothing to do with the investment - are being required to provide their social security numbers. The purpose of the filing simply doesn't apply to their companies, let alone to them individually.

As the filing burden has increased under the APPS system - as a result of the system not having worked well, the intrusiveness of the information required to be provided, and the fact that it would be provided in electronic form - investors are limiting their participation in the program. Fannie Mae and Freddie Mac combined had accounted for more than 50 percent of LIHTC property financing, but Freddie Mac and many other firms have instituted a policy that they will not invest more than 25 percent in any fund or property. Doing so avoids having to fill out Form 2530 through APPS.

Thus, HUD has employed a form so burdensome that it is undercutting the government's purpose - encouraging development of low-income housing. HUD's red tape is standing in the way of affordable housing development instead of aiding it.

Senior staff at HUD have been sympathetic. After Chairman Oxley wrote to Secretary Jackson about these problems in December, 2005, HUD extended the time during which people could make paper filings (through June 30 of this year), and worked to improve its computer program. HUD also began work on a rule to lessen the filing burden for many entities, particularly by exempting many investors. It should be noted that AHTCC, NHLA and NASLEF would also like to lessen the filing burden for syndicators, though the groups have not requested that syndicators be entirely exempted.

It is understood that this rule is now at OMB for review. Its urgency must be recognized. What investors get in return for their funding is a 10-year stream of tax credits. Many people try to get deals finished at the end of the year so that the tax credits will apply, and thus we expect many 2530 filings between now and the end of the year. More important, passive investors are now planning their investment levels for 2007, and rules to relieve them of their self-imposed 25 percent limit in 2007 are needed. Industry members have been hearing from HUD since May that the rule would be published soon. The end of the year is drawing close with no relief.

Specifically, we ask: (1) that the rule be issued as soon as possible; and (2) that it either be issued in interim form or provide that relief may take effect immediately so the industry can smoothly complete the filings to develop low-income housing.



Importance of 2530 Relief by Year-End

Most of the equity investment in projects that are eligible for the Low-Income Housing Tax Credit (“Housing Tax Credits”) are from corporate investors that are either public companies subject to the reporting requirements of the Securities Act of 1934 or are otherwise regulated under banking, insurance or similar laws. Most of these corporate investors are calendar year taxpayers which are provided a budget at the beginning of the year for either making investments specifically in Housing Tax Credit investments or for making socially desirable alternative investments. Many of these investors have limited their investment to less than 25% of the equity invested in any single HUD financed project in order to avoid the significant regulatory burdens imposed by the 2530 process. But for the 2530 filing requirement, these investors would invest more than 25% of the equity in a single project.

Additionally, a significant majority of state allocations of Housing Tax Credits are awarded in the third and fourth quarter, and these projects are required to be closed within a short period of time following such allocations. Therefore, a significant portion of the investment in Housing Tax Credit projects occurs during the fourth quarter. This year in particular has been unusual. There was a substantial reduction in investment early in the year due to historically low yields on Housing Tax Credit investments and many investors that had budgeted funds sat on the side lines waiting for the market to change. The market has changed resulting in higher investor yields, bringing these investors back into the market.

Providing these investors relief from the 2530 filing requirement prior to year-end would allow investors to meet their budget goals and the following additional goals:

- Those investors that are banks, savings and loan associations and thrifts have Community Reinvestment Act (“CRA”) undertakings and goals that are required to be met on an annual basis. Investment in Housing Tax Credit projects are CRA eligible investments. Limiting investment in a particular project to less than 25% of the total equity investment impedes the ability to meet these annual CRA goals.
- Investment in Housing Tax Credit investments are part of a corporate investor social investment program, which similarly have annual goals that are impeded by the 2530 limitation.
- If budget is not met, then it is likely that the budgets for succeeding years will be reduced. This could result in a long-term reduction of investment in transactions that have been deemed socially beneficial by Congress.

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U.S. House of Representatives
 Committee on Financial Services
 2129 Rayburn House Office Building
 Washington, DC 20515

December 21, 2005

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The Honorable Alphonso Jackson
 Secretary
 Department of Housing and Urban Development
 451 Seventh Street, S.E.
 Washington, D.C. 20410

Dear Secretary Jackson:

I am writing to express concern about changes to the Department of Housing and Urban Development (HUD) multifamily Previous Participation Certification (Form 2530) filing requirements, which appear to be creating significant and unnecessary problems for the construction and preservation of affordable housing. As a result of what appears to be an immediate and time-sensitive issue, I would like the Department to consider allowing a dual system for both manual and electronic filing of the Form 2530 until technical problems are resolved that allow a seamless electronic filing by those entities required to disclose information necessary to complete multifamily mortgage insurance or other types of affordable housing applications. For the longer term, I would like HUD to meet with this Committee to discuss the objectives of the Form 2530 and the best avenue to achieve proper accountability.

Form 2530 has been used for many years to ascertain the prior record of participants in certain HUD programs. This enables HUD to refuse to do business with participants who have not previously carried out their obligations. However, it is my understanding that personnel attempting to file on the new APPS system frequently cannot even connect to it, meaning participants cannot complete their transactions and needed private funding is delayed. This delay or technical problem will result in delayed funding, discouraging investment, and therefore limiting the federal government's ability to leverage public resources with private participation, particularly the practical ability of financial institutions to invest in affordable housing through the Low Income Housing Tax Credit (LIHTC).

Due to the complications with APPS, LIHTC transactions that must close before the end of the year are at risk because the system is inoperable and filing of the 2530 is a requirement for the transaction to go forward. The nation currently faces an affordable housing shortage. The LIHTC program is the most successful affordable housing program. It is unacceptable that potential technical difficulties could pose a threat to the creation of safe, affordable quality housing.

The Honorable Alphonso Jackson
Page 2
December 21, 2005

A long term issue involves the substance of the disclosure form. The 2530 process is designed to review "principals," including any limited partner with a 25 percent or greater interest in a property. These rules were developed long before there was a LIHTC program. Under the LIHTC program, the typical investors are institutional — i.e., publicly trade and regulated national and multinational financial institutions, including government-sponsored enterprises, whose reputability is well-established. Under the 2530 process, officers, directors and stockholders with 10 percent and greater holdings are required to submit their names and social security numbers as well as their individual prior record with HUD.

It appears that the significant time investment and cost could deter investors who are seeking to invest in affordable housing, which is what federal policy is trying to encourage them to do. I am not aware of any other federal program that does not involve national security that has this level of scrutiny.

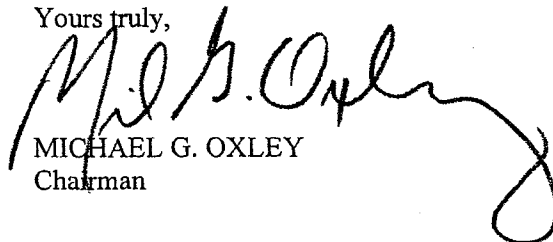
I request that you consider the following:

- Please provide a explanation of what entities, and whom within the entity, should file the Form 2530 and an explanation of the reasons for such filing. Include in the explanation a detailed list of the information HUD seeks to capture and the justification for each piece of information, particularly in the case of corporate passive investors, their directors and affiliates.
- HUD should immediately return to accepting paper 2530 filings until it can assure the public of smooth and reliable access to APPS.

HUD delayed implementation of the then-new Financial Analysis Secure System in 1998 because of technical problems. The difference with APPS is that if it does not work, low-income housing projects lose financing. Technical problems delayed use of APPS until recently.

Questions regarding this issue can be addressed to Clinton Jones and Cindy Chetti of the House Financial Services Committee staff at 202/225-7502.

Yours truly,



MICHAEL G. OXLEY
Chairman

MGO:cj



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Signed December 29, 2005 advance copy wwh

MEMORANDUM FOR: All Multifamily Hub and Program Center, Multifamily Operations Officers, Multifamily Staff and Supervisors, Owners, Management Agents, Mortgagees and other Participants in HUD Programs

FROM: Brian D. Montgomery, Assistant Secretary for Housing – Federal Housing Commissioner, H

SUBJECT: Active Partner Performance System (APPS) Electronic Filing

Effective immediately and through April 30, 2006, participants in HUD programs may file previous participation clearance applications, HUD Form 2530 either in paper form or via the Active Partner Performance System (APPS). **Hub and Program Center Directors are responsible for informing participants of this option.** HUD is processing a formal notice of this option. This memorandum allows a final period in which participants may choose either a paper or electronic method to file applications for participant clearance.

Background

The Active Partner Performance System (APPS) was implemented on October 12, 2005. The implementation followed a regulatory rule making process where a proposed rule was published in May 2004. Comments were received and a final rule was published on April 13, 2005. All participants are required to use APPS to make requests for participation clearance; there are no exceptions in our regulations. Applicants who cannot obtain a participation clearance may lose an opportunity to complete a pending business transaction. A transition period of an additional 6 months was provided in the final rule to allow participants to complete input of baseline data to the HUD systems and, if not already accomplished, to acquaint themselves with the full system operations. An additional period was allowed from October 28, 2005 through November 30, 2005 during which participants could choose either a paper or electronic application method.

Manuals needed to operate the system, a tutorial and a “quick start guide” have been continuously available and updated on the HUD Internet web site since the proposed rule was published in 2004. Staff in Housing has addressed multiple audiences about the system and its requirements since 2001.

At this time HUD knows of no specific systemic issues that might stand in the way of any participant entering data or applying for clearance. However, there have been broad statements made about general functionality (slow, frequent timeouts, etc.), which allegedly are impacting the business process of some participants (however, the Department knows participants who have indeed accomplished the process of baseline creation and application on line). The Department is undertaking a further review to rule out any systemic issues in the application or the subsystems serving it.

The Department while taking this step will allow this further option period during which participants may choose either paper or electronic applications for participation clearance. Barring the discovery of a significant system or infrastructure problem, the Department does not intend to offer this option again. The Department expects that all participants diligently pursue completion of their participant baseline information during the next 90-120 days. After this period, participants who cannot meet the regulatory requirements will need to postpone further applications for clearance until they can do so through the online Active Partner Performance System (APPS).

There are always upgrades and improvements to be made to any computer application, and as issues arise they are identified and resolved. This process is ongoing and is not considered cause for alteration of the normal business processes.

Regulations

The regulations at 24 CFR, 200.217 state:

Sec. 200.217 Filing of previous participation certificate on prescribed form.

- (a) Effective October 11, 2005¹, or on such later date as may be allowed by HUD, all principals in HUD multifamily mortgage and project based subsidy programs must submit an electronic Previous Participation Certificate (form HUD-2530) via HUD's secure web server as a condition prerequisite to new or revised participation. Prior to this date, principals are required to file form HUD-2530 as a condition prerequisite to new or revised participation. Filing requirements are as prescribed by the Assistant Secretary for Housing-Federal Housing Commissioner at the occurrence of any of the events below:

This passage states clearly that HUD may alter the effective date and that the filing requirements are as prescribed by the Commissioner.

In order to accommodate participants and to reduce or eliminate the effects of unforeseen and unpredictable problems, participants will be provided an option to apply for required participation clearances either in paper form or via APPS.

¹ HUD granted an extension for paper applications through November 30 2005.

The term of the option period is through April 30, 2006. Effective after April 30, 2006, all participants in HUD multifamily mortgage and project based subsidy programs must submit an electronic Previous Participation Certificate (form HUD-2530) via HUD's secure web server as a condition prerequisite to new or revised participation. Providing this option should not be construed in any way to change any other portion of HUD regulations other than as stated herein.

All participants in Multifamily Programs are reminded that failure to register and complete the data input required by APPS will restrict new and revised participation until after system inputs are completed. Introductory and explanatory information, including a system tutorial, are available on HUD's Internet Site at:

<http://www.hud.gov/offices/hsg/mfh/apps/appsmfhm.cfm>

Questions concerning this Notice should be directed to Kimberly Munson in the Office at Asset management at 202-708-1320. This notice should not be construed in any way to change any other portion of the regulations other than the extension granted herein.



HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

FRANCINE E. FRIEDMAN
DIRECT DIAL: 202-955-1536
EMAIL: ffriedman@hunton.com

FILE NO: 64754.000005

April 27, 2006

Via hand delivery and facsimile

The Honorable Brian D. Montgomery
Assistant Secretary for Housing
Federal Housing Commissioner
U.S. Department of Housing and Urban Development
Room 9100
451 Seventh Street, SW
Washington, DC 20410

Re: HUD Form 2530 - Proposed Revisions to 24 CFR Section 200.215(e)(3)

Dear Assistant Secretary Montgomery:

It was a pleasure to meet you at the National Council of State Housing Agencies reception honoring the 20th Anniversary of the Low Income Tax Housing Credit. As Assistant Secretary for Housing and Federal Housing Commissioner, you play a very important role in the Housing Credit industry, which plays an essential role in achieving numerous affordable housing initiatives.

As you and I briefly discussed, I represent the Affordable Housing Tax Credit Coalition (AHTCC), and our members are concerned that the current requirements under the Form 2530 process are discouraging much-needed investment in affordable housing development. The AHTCC and others in the Housing Credit industry hope to work together with HUD to develop new requirements that better collect any necessary information and eliminate unnecessary burdens.

Enclosed is a proposal that suggests changes to the 2530 rules to exempt limited liability investors and particular parties linked to syndication companies and direct investors. Included in the proposal are suggested changes to the regulation as well as a short explanation of those suggested changes.

The Affordable Housing Tax Credit Coalition, the National Association of State and Local Equity Funds, the Local Initiatives Support Corporation and its affiliate the National Equity

**HUNTON &
WILLIAMS**

The Honorable Brian D. Montgomery
Assistant Secretary for Housing
Federal Housing Commissioner
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Fund, and Enterprise Community Partners and its affiliate Enterprise Community Investors are the organizations which are submitting this document. These organizations represent a majority of the Housing Credit syndication industry, including for profit and not-for-profit companies. Syndicators raise capital for investment in the Housing Credit.

Please note that the proposal does not exempt syndication companies nor limited liability direct investors from the 2530 process. On the other hand, it does exempt limited liability investors in funds managed by syndication companies. Furthermore, it also exempts employees, directors, and partners of syndication companies and direct investors who do not have a meaningful ownership interest in the company, as well as parent and related corporations of the syndication company and the direct investor.

Please feel free to contact me if you have any questions or concerns regarding the proposal. We look forward to working with you and your staff to resolve this important issue.

Very truly yours,


Francine E. Friedman

Enclosures

Explanation of Proposed Exemptions to the 2530 Previous Participation Process

The purpose of this language is to exclude from the 2530 process those individuals and entities whose previous relationship to a HUD insured or assisted property is not relevant to the previous participation process.

First, the language exempts certain investors whose ownership in a housing property is passive in nature, without the ability to control the management of the property and whose liability to the project is limited. This provision is limited to entities investing through a syndication company that are publicly traded companies whose stock is listed on a national stock exchange, commercial banks, thrift institutions, insurance companies, federally chartered corporations, or the majority owned subsidiaries of such companies. Since limited liability investors in a syndication partnership do not control management of an affordable housing property it is not appropriate to impose previous participation requirements on them.

Second, the language exempts partners, employees, officers, and directors of syndication companies or direct investors who do not have more than a ten percent ownership interest in the syndication company or direct investor. It is not relevant to the previous participation process to require that individuals acting as partners, employees, officers, or directors of a syndication company or direct investor, produce information with respect to any previous participation they may have had in a HUD property if they do not have a substantial ownership interest in the company but are instead acting in their capacity as employees or fiduciaries.

Third, the language exempts from the previous participation process the parent company and /or affiliate of a syndication company or direct investor where the parent and/or affiliate is a publicly traded company, a commercial bank, a thrift institution, an insurance company, or a majority owned subsidiary of such companies. Neither the parent company -- nor its officers, directors, stockholders nor affiliates -- should be subject to the 2530 process which is designed to determine the previous participation of the syndication company or direct investor.

It should be noted that under the proposed exceptions above the syndication company and direct investor would continue to be subject to the 2530 previous participation process because such companies exercise asset management responsibilities over the properties in which their investors provide capital. Accordingly, because such asset management functions may influence property operation, it is appropriate for such companies to continue to file and to designate responsible officers or employees to be contact persons with respect to the 2530 process and property operations.

24 CFR Section 200.215(e)(3) is amended and restated as follows:

(iv) Entities which invests through a syndication company and whose sole ownership interest is that of a limited partner or a non-managing member of a limited liability company, and who are either

(I) required to file periodic reports under Sections 13 or 15 of the Securities Exchange Act and whose securities are listed on a National Securities Exchange,

(II) a Bank (as defined in Section 3(a)(2) of the Investment Company Act of 1940,

(III) a savings and loan association or other institution as referenced in Section 3(a)(5)(A) of the Investment Company Act of 1940,

(IV) an Insurance Company (as defined in Section 2(a)(13) of the Investment Company Act of 1940)

(V) a federally chartered corporation, or

(VI) any majority owned subsidiary of the foregoing or entity whose equity owners solely consist of the foregoing;

(v) Partners, employees, officers and directors of syndication companies or direct investors, who have less than a 10 percent ownership interest in the equity securities of the syndication company or direct investor; and

(vi) Parent and/or affiliates of syndication companies or direct investors who are either:

(I) required to file periodic reports under Sections 13 or 15 of the Securities Exchange Act and whose securities are listed on a National Securities Exchange,

(II) a Bank (as defined in Section 3(a)(2) of the Investment Company Act of 1940,

(III) a savings and loan association or other institution as referenced in Section 3(a)(5)(A) of the Investment Company Act of 1940,

(IV) An Insurance Company (as defined in Section 2(a)(13) of the Investment Company Act of 1940),

(V) a federally chartered corporation, or

(VI) any majority owned subsidiary of the foregoing or entity whose equity owners solely consist of the foregoing.

Definition:

For the purpose of this subsection only, syndication companies are companies that aggregate equity capital contributions from one or more limited liability investors and who have designated a responsible party employed by such syndication company to provide the information required by this Section.