

Bonham



Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6000

November 10, 1994

[REDACTED]

RE: Proposed Investment in a Low-Income Housing
Tax Credit Partnership

Dear Mr. [REDACTED]

This responds to letters dated September 29, 1994, and July 21, 1994, submitted on behalf of [REDACTED] (the "Association"), requesting confirmation that the Office of Thrift Supervision ("OTS") will not take enforcement action against the Association under § 5(c) of the Home Owners' Loan Act ("HOLA")¹ if the Association invests in the low-income housing tax credit ("LIHTC") partnership described below.

Based on the information submitted, we have decided to grant the Association's no-action request, provided the investment is consummated in accordance with the Association's representations.

I. Background

The Association proposes to purchase up to \$3 million in limited partnership shares in a LIHTC partnership that will construct low-income rental housing units in the city of [REDACTED] for individuals of at least 55 years of age. The housing units will be located near the intersection of [REDACTED] Street and [REDACTED] Street.

At this time, the LIHTC partnership has not been formed and the general partner has not been selected. However, the Association has indicated that the general partner, when eventually selected, will be a non-profit corporation that will be "neighborhood-based" as defined by 24 C.F.R. § 570.204(c)(1), subject to the qualification noted below in footnote 14. The exact amount of the Association's investment (subject to a maximum of \$3 million) and the exact number of housing units will be determined

¹ 12 U.S.C.A. § 1464(c) (West Supp. 1994).

upon the completion of a market study by an independent appraiser. However, the Association warrants that the partnership, once formed, will meet the tax code requirements necessary to qualify as a LIHTC partnership. This means that, among other things, a significant portion of the housing units will be reserved for occupancy by low-income persons.² The Association has indicated that it expects that the majority of the occupants will make their rental payments through vouchers issued by the United States Department of Housing and Urban Development ("HUD") to low-income persons.

The Association represents that the city of [REDACTED] is in great need of affordable rental housing for elderly individuals. Among the evidence the Association provides to support this assertion is that as of June 27, 1994, 71 individuals were on the [REDACTED] Housing Agency waiting list for one-bedroom elderly housing.³ Moreover, a recent study by the Department of Planning, [REDACTED] for the city of [REDACTED] (" [REDACTED] Department of Planning") found that 343 of the 859 rental housing units being occupied by people over the age of 65 were "unaffordable" to their occupants.⁴

II. Discussion

Federal savings associations are authorized by HOLA § 5(c)(3)(B) to invest up to 2% of their assets in real estate located in an area receiving concentrated development assistance under Title I of the Housing and Community Development Act of 1974 ("Title I").⁵ These investments can be made directly or through LIHTC partnerships.⁶ The OTS has previously indicated that any

² 26 U.S.C.A. § 42(g) (West 1988).

³ For purposes of this waiting list, the [REDACTED] Housing Agency considers individuals who are 62 years of age or older to be "elderly."

⁴ In determining "affordability," the [REDACTED] Department of Planning used criteria established by HUD.

⁵ 12 U.S.C.A. § 1464(c)(3)(B) (West Supp. 1994). As of September 30, 1994, the Association had approximately \$155 million in assets. Thus, the Association is authorized to invest up to \$3.1 million in real estate that meets the requirements of HOLA § 5(c)(3)(B). The Association represents that it currently has no investments (equity or debt) under HOLA § 5(c)(3)(B).

⁶ See OTS pamphlet entitled, "Community Development Investment Authority: A Guide to the Federal Laws & Regulations Governing Community Development Activities of Savings Associations," pp. 11 and 14 (1994) (hereafter "Community

area receiving one of the following designations will be deemed to receive significant assistance under Title I:

- Any area that a community designates on its Comprehensive Housing Affordability Strategy for targeted housing assistance;
- Any Community Development Block Grant ("CDBG") code enforcement area;
- Any area in which a CDBG special subrecipient is carrying out a neighborhood revitalization project;
- Any area targeted for development assistance on a community's CDBG final statement; and
- Any empowerment zone.⁷

Due to significant reduction in the number of areas receiving concentrated Title I assistance, the OTS has indicated that it may be willing, on a case-by-case basis, to take a no-action position for investments that further the purposes of HOLA § 5(c)(3)(B), even though the investments are made in areas not receiving Title I assistance.⁸ The primary purpose of HOLA § 5(c)(3)(B) is to enable federal savings associations to assist in "the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income."⁹

Although your proposed project is not located in an area receiving Title I assistance, you have indicated that the project will help provide decent, affordable housing for persons of low and moderate income. In addition, you have submitted data prepared by the city of [REDACTED] indicating that the proposed project site is located in a geographic area that is: (i) significantly more impoverished than the city of [REDACTED] in general; and (ii) quite similar to an actual CDBG area in [REDACTED] that is receiving significant Title I assistance. The data are as follows:¹⁰

Development Pamphlet"); and OTS T Memorandum 79a (1986).

⁷ Community Development Pamphlet, pp. 10-11.

⁸ Community Development Pamphlet, pp. 11 and 14.

⁹ 24 C.F.R. § 570.2 (describing the primary purpose of Title I, to which HOLA § 5(c)(3)(B) is explicitly linked).

¹⁰ These data are contained in a letter dated September 29, 1994, from Department of Planning, [REDACTED] for the city of [REDACTED] ([REDACTED] Dept.

	<u>Proposed Project Area</u> ¹¹	<u>CDBG Area</u>	<u>Citywide</u>
Households	413	635	10,502
Median income . . .	\$14,598	\$15,508	\$22,783
Persons above poverty line . . .	485 (85%)	1,233 (86%)	22,724 (88%)
Persons below poverty line . . .	83 (15%)	199 (14%)	3,170 (12%)
Number paying more than 30% of income for rent .	139 (42%)	75 (39%)	1,315 (35%)

Thus, the proposed project area has a lower median income, a higher rate of poverty, and a greater percentage of persons paying more than 30% of their income for housing than [REDACTED] actual CDBG area.

We also note that the proposed project will apparently meet the basic criteria that HUD has established for CDBG assistance (although no such assistance is expected to be received) because, inter alia: (i) the project is consistent with the primary objective of Title I to provide expanded housing and economic opportunities for low- and moderate-income persons;¹² (ii) a majority of the units in the housing project will be occupied by low- and moderate-income persons at affordable rents;¹³ and (iii) the partnership's general partner will be a "neighborhood-based nonprofit organization."¹⁴

of Planning") and was attached to the Association's September 29, 1994, submission.

¹¹ For purposes of this comparison, the proposed project areas is defined as an area in the shape of a triangle that covers approximately six square blocks and is bounded by a commercial district to the west, an undeveloped area to the north, and railroad tracks and a major roadway to the southeast.

¹² 24 C.F.R. § 570.200(a)(2) and (a)(3).

¹³ 24 C.F.R. § 570.208(a)(3).


¹⁴ 24 C.F.R. §§ 570.200(a)(1), 570.207(b)(3)(iii), and 570.204(a). An organization is deemed to be "neighborhood-based" if "the majority of either its membership, clientele, or governing

Based on the foregoing, we conclude that the proposed investment furthers the purposes of HOLA § 5(c)(3)(B) because both the project and the area in which it is located have characteristics that are very similar to those that would be required to qualify for Title I concentrated development assistance. Accordingly, the OTS will not take enforcement action against the Association for violation of HOLA § 5(c) if the Association undertakes the proposed investment. In reaching this conclusion, we have relied on the factual representations contained in your July 21, 1994, and the September 29, 1994, submissions and in supplemental conversations with you, as summarized herein. Our conclusion depends on the accuracy and completeness of those representations. Any material change in circumstances from those described might require a different conclusion. Moreover, this conclusion represents our position on enforcement in this particular case, and should not be relied upon for any other transaction.

It is also important to note that our conclusion pertains only to enforcement actions based on HOLA § 5(c) (basic investment authority). The Association is responsible for ensuring that its investment is safe and sound under all the facts as they exist at the time of the investment and that the investment conforms to all other applicable laws and regulations. This letter does not preclude enforcement action for failure to satisfy these standards.

If you have any further questions regarding this matter, please feel free to contact Jeff Miner, Assistant Deputy Chief Counsel, at (202) 906-7546.

Sincerely,



Carolyn B. Lieberman
Acting Chief Counsel

cc: Regional Director
Regional Counsel
Midwest Region

body are residents of the neighborhood where activities assisted with CDBG funds are to be carried out." 24 C.F.R. § 570.204(c)(1). HUD regulations indicate that an entire city can be classified as a "neighborhood" when its population is under 25,000. *Id.* As of the end of 1992, [REDACTED] had a population of 25,784. [REDACTED] population has been steadily declining since 1970. Under these circumstances, we will not object if the Association treats the entire city of [REDACTED] as a "neighborhood" for purposes of selecting a suitable non-profit general partner.