

September 6, 2007

The Honorable Barney Frank
Chairman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515-1306

Dear Chairman Frank:

On behalf of the Housing Advisory Group, the Affordable Housing Tax Credit Coalition, and the National Association of Home Builders, we are writing in response to positions taken by the Securities and Exchange Commission (SEC) that will needlessly disrupt the audit process for many LIHTC operating limited partnerships and increase the financial burden on rent-restricted properties. One of the unintended consequences of the Sarbanes-Oxley Act is that it frustrates the purpose of another congressionally mandated program – the Low Income Housing Tax Credit (LIHTC) – and it does so without protecting any investors. Consequently, we ask that a permanent exception to these rules be extended to audits at the LIHTC operating partnership level.

The affordable housing industry continues to struggle with issues arising from specific auditing issues at the operating partnership level in connection with investments in LIHTCs. First, the SEC requires the audit of a registrant public LIHTC fund to be performed under the Public Company Accounting Oversight Board (PCAOB) standards, and the audit of each material investment in LIHTC operating partnerships in which they invest also must be performed according to PCAOB standards. Second, we are also concerned that if the SEC insists on maintaining this unnecessary requirement of the operating partnerships in public LIHTC funds, auditors of publicly traded corporations that have made and continue to make material investments in LIHTC limited partnerships through private offerings will require PCAOB audits at the operating partnership level in order to issue their opinions for such publicly traded corporations.

SEC Chairman Christopher Cox correctly noted in the memorandum attached to his letter dated December 19, 2006, that currently there are no significant differences in the actual audit between PCAOB and the pre-existing American Institute of Certified Public Accountants (AICPA) standards, but this situation is subject to change. Furthermore, the independence requirements under AICPA and SEC/PCAOB standards already differ slightly in two respects that cause significant difficulties for many operating partnerships.

First, the SEC and PCAOB regulatory definition (*i.e.*, the federal securities regulatory definition) of “independence” specifically prohibits anyone who maintained or prepared accounting records, financial statements or originating source data underlying financial statements from serving as an independent auditor of those statements. The AICPA interpretation of independence is much less specific and *explicitly allows* an accountant to prepare the financial statements and perform other bookkeeping functions, yet still serve as the independent auditor. LIHTC operating limited partnerships have a difficult time meeting the federal securities regulatory definition of independence because the general partners of most LIHTC operating limited partnerships are small, privately-owned real estate developers, and they do not have the staff required to prepare financial statements for their auditors. They must outsource their accounting services, and many operate in communities that do not support more than one accounting firm. The general partner faces a substantial hurdle if the only qualified local auditor is also the accountant who prepared the statements. Even in those communities

in which there is more than one accounting firm available, experience has shown that splitting the accounting and auditing functions for even these financially simple businesses can increase costs beyond the ability of the business to accommodate, since, as is the nature of the affordable housing industry, rents cannot be raised to accommodate any additional operating costs.

Furthermore, LIHTC investments are different from other investments regulated by the SEC. Normally, the SEC functions to protect the investor from being defrauded. However, LIHTC fund investors are told in the prospectus that they should expect no dividends, capital appreciation, or even a return of their capital. The total return for these investors is received in the form of tax credits. Moreover, the state housing finance agencies who allocate the tax credits in the first place are obligated under federal tax law to review all the relevant criteria for continued qualification for those tax credits. This constitutes an independent review that should be an adequate substitute for a PCAOB audit. Taken in conjunction with the AICPA's requirements for non-issuing companies, the state audit should be more than sufficient to protect investors. The consequence of adding PCAOB's independence requirement is an increase in operating costs for affordable housing projects that already face significant budgetary constraints. The extra cost may be just enough to push affordable housing into insolvency.

Second, and by way of background, if an accounting firm was a member of the SEC Practice Section as of April 16, 2003, an auditor's work must be reviewed by a second principal in the firm to comply with PCAOB standards. SEC staff has expressed the view that the "grandfather" for accounting firms that were not members of the SEC Practice Section as of April 16, 2003, may be revoked in the future, requiring that all accounting firms comply with the second partner review requirement. There are many small accounting firms in rural communities without a second audit partner. If this grandfather provision is revoked, many accounting firms auditing LIHTC operating partnerships no longer will be able to perform audits of LIHTC operating partnerships, and in many areas, no other accounting firm would be available to perform the necessary audits. In addition, as we understand the SEC's position, if an auditing firm plays a "substantial role" in auditing investments of a public fund, that firm must register with the PCAOB and, therefore, would not be grandfathered under the April 16, 2003 rule. Firms cannot rely on the current similarity of AICPA and PCAOB standards, since the PCAOB was created to develop accounting standards for security-issuing companies.

Thank you for your assistance in this important matter. We greatly appreciate your continual efforts in supporting and assisting the affordable housing industry. Please let us know if we can provide you with any additional information. You may reach us by contacting counsel for the Housing Advisory Group, Thomas Davis or Michelle Garcia at Davis & Harman LLP, by telephone at (202) 347-2230, or by email at tadavis@davis-harman.com and magarcia@davis-harman.com, respectively.

Sincerely,

The Housing Advisory Group
The Affordable Housing Tax Credit Coalition
The National Association of Home Builders

cc: Lawranne Stewart (Senior Counsel, House Committee on Financial Services)