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CERTIFIED PUBLIC ACCOUNTANTS

January 16, 2013

Mr. James R. White
Director
Tax Issues
Strategic Issues
United States Government Accountability Office
Washington, DC 20548

Dear Mr. White:

On behalf of the members of the Low Income Housing Tax Credit ("LIHTC") Working Group, we respectfully submit our comments in response to the report from the United States Government Accountability Office ("GAO") titled *Community Reinvestment Act: Challenges in Quantifying Its Effect on Low-Income Housing Tax Credit Investment* (the "GAO Report"). The members of the LIHTC Working Group are participants in the LIHTC industry who work together to help resolve technical LIHTC program issues and provide recommendations to make the LIHTC program even more efficient in delivering benefits to help build affordable housing. Our group includes nonprofit and for profit developers, syndicators, investors, accountants and lawyers. Our comments below are made on each of the major conclusions expressed in the GAO's report. We hope to engage the GAO in a continuing dialogue on the CRA's effect on bank investor's demand for LIHTCs as well as other efforts by the GAO as it relates to the LIHTC industry.

<u>GAO Report, Page 6 – Quote:</u>

> *Community Reinvestment Act ("CRA") should increase investor demand for LIHTCs: The purpose of the CRA is to encourage insured depository institutions to help meet the credit needs of their communities, and LIHTCs qualify as a measure to meet those needs. LIHTCs help in allowing banks and other financial institutions meet their investing requirements under the CRA, therefore the CRA should increase investor demand for LIHTCs.*

<u>Comments</u>

The CRA is often cited as a primary factor in determining where and how banks provide community development financing. Because the CRA law itself is relatively brief and broad, regulators have fairly wide discretion in implementing it. Motivated by the CRA, banks have made billions of dollars of successful community development loans and investments. One of the CRA's signature achievements has been to create successful partnerships among banks, all levels of government, and developers and these partnerships help leverage limited public funds. However, there are some concerns regarding the CRA's effectiveness in stimulating community development. At the forefront of these concerns is the geographic imbalance in the LIHTC market, resulting from the current implementation of the CRA. Some of the largest investors in the LIHTC industry are banks and other institutions subject to investing requirements under CRA. In our experience, we have found that in large, metropolitan markets where more sizeable banks are subject to greater CRA needs, these banks appear to be engaging in a greater degree of competition that is disproportionate to the number of LIHTC projects in such major metropolitan markets. Conversely, LIHTC projects in geographic markets in which large banks are not subject to as much CRA need are encountering a lack of LIHTC investor interest, as well as a lower price an investor is willing to pay for a LIHTC credit, as compared to LITHC projects in major metropolitan markets. This geographic disparity has created a two-tier LITHC equity market: one tier with higher credit prices in high-demand CRA assessment areas, and a second tier with lower demand in non-CRA assessment areas. LIHTC industry investors subject to CRA view CRA as a highly motivating factor as to why they make their LIHTC investments, thus CRA should be reformed to reduce the geographic imbalance in the market.

GAO Report, Page 6 – Quote:

> *Quantifying the extent of any effect of CRA on LIHTC equity contributions is difficult. Experts have cited many different factors which affect demand for LIHTC projects. Additionally, there are a few studies that model several different influences on LIHTC contributions, but there are none that show the effect of only the CRA on LIHTC investments. The CRA is most likely a factor that increases bank demand for LIHTC investments, but quantifying the extent of the effect is difficult.*

Comments

CRA-motivated investors with no current income tax liability have made significant LIHTC equity investments in projects in major metropolitan areas. CRA requirements sometimes inflate the demand for LIHTC investments located in areas where many institutions have large CRA needs. Additionally, a poll that was conducted by the Novogradac Journal of Tax Credits in 2010 revealed that similar bank investors' investments are heavily influenced by two factors: tax liability and CRA obligations[1]. As explained by one bank representative questioned in the poll, "We use our affordable housing investing as one of the main ways we meet our CRA investment test… what's attractive to us are the strong markets."[1]

[1] Jennifer Dockery, "Banks Increase LIHTC Investments as Economy Improves," Novogradac Journal of Tax Credits Volume I, Issue V (2010): p12.

GAO Report, Page 6 – Quote:

> *The common LIHTC price measure is subject to misinterpretation: An investor's equity contribution reflects the value of not just the LIHTCs, but also any other tax and regulatory benefits, such as deductions for depreciation and interest expenses.*

Comments

LIHTC properties are underwritten to generate net operating income, providing cash flow to the property, while providing taxable losses to the investor through non-cash deductions, such as depreciation. LIHTC properties are limited as to the rent that can be charged, therefore, the property is less likely to generate taxable income, which would offset the benefit of the LIHTC and decrease the LIHTC price. Even though there are tax benefits being generated by tax losses, the industry typically prices the investments as a price per credit. For example, investors typically pay, on average, $0.75 for each $1.00 in LIHTCs they are expected to receive from the investment. However, we have found that CRA-motivated investors are willing to pay higher prices for LIHTCs – sometimes in excess of $1.00 per every $1.00 of LIHTC in certain major metropolitan markets. We believe that projects in large CRA markets will continue to drive up LIHTC equity pricing as CRA-motivated investors compete to meet the CRA obligations in their assessment areas.

Although the goal of the GAO's report was to determine the impact of CRA on bank investors' demand for LIHTCs, the report was not able to quantify the extent of any effect of CRA on LIHTC equity contributions. At best, qualitative data was obtained through interviews of LIHTC industry participants and surveys of housing finance agencies, which suggested that other factors could influence investors' decisions to invest in LIHTCs. We believe CRA is a significant investment factor for those market participants subject to the investing requirements under CRA. Therefore, we respectfully request that the GAO continues its efforts to obtain quantitative data on the effect of CRA, and other factors, on the market for LIHTCs.

We are excited about the positive impact that the LIHTC program is having on the nation's low-income communities and low-income persons and its potential for future success. We appreciate the opportunity to submit our comments and thank you in advance for your time and consideration. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

THE LIHTC WORKING GROUP

Very truly yours,
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