Office of Thrift Supervision
Department of the Treasury

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

May 10, 1995

[redacted]

RE: Community Development Investments; HOLA § 5(c)(3)(B)

Dear [redacted]

This responds to your request dated April 18, 1995, submitted on behalf of [redacted] for clarification of the circumstances under which the Office of Thrift Supervision ("OTS") will take a no-action position with respect to investments made by federal savings associations under § 5(c)(3)(B) of the Home Owners' Loan Act ("HOLA").[1]

As is explained in more detail below, the community development investment authority provided by HOLA § 5(c)(3)(B) is linked to certain programs administered by the Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act as they existed in 1978 when HOLA § 5(c)(3)(B) was enacted. Although the Title I programs referenced in HOLA § 5(c)(3)(B) still exist, they have been modernized and no longer emphasize "concentrated" development assistance, as HOLA § 5(c)(3)(B) assumed. So as not to render HOLA § 5(c)(3)(B) a nullity, the OTS has indicated that it will take no-action positions for safe and sound investments that further the basic purposes for which HOLA § 5(c)(3)(B) was enacted.[2] Based on the no-action requests that the OTS has received in recent months, we are now in a position to provide more detailed guidance regarding the types of investments that will be deemed non-objectionable.

The OTS will not take enforcement action against federal savings associations for investments that meet the standards articulated in this letter. Savings associations no longer need to

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1 12 U.S.C.A. § 1464(c)(3)(B) (West Supp. 1995).

2 See OTS pamphlet entitled, "Community Development Investment Authority," p. 11 (March 1994); and OTS Op. Acting Chief Counsel, November 10, 1994, at 3.

apply to OTS for case-by-case no-action letters for investments that meet these standards.

Background

HOLA § 5(c)(3)(B) authorizes federal savings associations to invest up to 2% of their assets in equity investments in real estate located in "geographic area[s] or neighborhood[s] receiving concentrated development assistance . . . under title I of the Housing and Community Development Act of 1974" ("Title I").[3] The principal program administered by HUD under Title I is called the Community Development Block Grant ("CDBG") program. When HOLA § 5(c)(3)(B) was enacted in 1978, the CDBG program encouraged localities to target Neighborhood Strategy Areas ("NSA") to receive concentrated development assistance under Title I.[4] Federal savings associations could readily determine what areas in their region qualified for HOLA § 5(c)(3)(B) investments by reviewing NSA designations.

Today, however, the CDBG program no longer contains an NSA component. Under the current CDBG program, grants are given to hundreds of CDBG entitlement communities (mostly cities of 50,000 or more), to the States for expenditure in a manner consistent with HUD guidelines, and to some smaller cities and local jurisdictions. Entitlement communities, States, and small cities are no longer required, or encouraged, to concentrate their Title I funding in particular neighborhoods.[5] Instead, Title I funds can be expended to support any project that: (a) is located in an entitlement community, a nonentitlement area that is covered by a CDBG program administered by a State, or a jurisdiction that participates in the Small Cities program; and (b) meets CDBG project requirements for

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[3] HOLA § 5(c)(3)(B) also authorizes certain loans in these areas. Combined loans and equity investments cannot exceed 5% of assets. The standards announced in this letter apply only to equity investments. See 12 C.F.R. § 545.41 (1995).

[4] 24 C.F.R. §§ 570.201(e) and 570.301(c) (1978).

[5] It is our understanding that HUD may, in the near future, promulgate guidelines that may provide incentives to states and local governments to designate neighborhood revitalization areas. 60 Fed. Reg. 1878, 1903-1904 (January 5, 1995). Depending on how this program develops, it may eventually again result in identifiable areas that are receiving concentrated Title I assistance. The OTS will continue to monitor developments in this area. However, no changes in OTS policy to reflect changes in HUD programs will be applied retroactively to investments made under the standards described in this letter.

benefitting low- and moderate-income persons or supporting certain other public welfare objectives.[6]

Thus, the "concentrated development assistance" standard in HOLA § 5(c)(3)(B) has become obsolete. The OTS is seeking a statutory amendment to modernize this provision. In the interim, so as not to render HOLA § 5(c)(3)(B) a nullity, the OTS has followed the practice of issuing no-action letters for safe and sound investments that are consistent with the spirit and intent of HOLA § 5(c)(3)(B). Based on the no-action requests received in recent months, the OTS is now in a position to provide further guidance regarding the types of HOLA § 5(c)(3)(B) investments that will be deemed non-objectionable. These new standards are intended to ensure that such investments are consistent with safety and soundness and further the basic purposes of Title I.

Standards

The OTS will not object to equity investments made by federal savings associations pursuant to HOLA § 5(c)(3)(B) that meet the standards set forth below. Federal savings associations may invest directly in real estate investments that meet these standards. They may also invest in a limited partnership or corporation that, in turn, invests exclusively in real estate investments that meet these standards.[7] Associations that wish to make investments that do not meet these standards, but that are consistent with the spirit and intent of HOLA § 5(c)(3)(B), may continue to seek case-by-case OTS no-action review by the OTS Chief Counsel. The appropriate OTS regional office should be copied on any no-action request.

1. **The investment must be located either in a CDBG entitlement community, in a nonentitlement community that has not been specifically excluded by the State in statewide submissions for CDBG funds, or in an area that participates in the Small Cities Program.**[8]

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6 24 C.F.R. Part 570 (1994).

7 T Memorandum 79a, Indirect Investments in Permissible Investments Through a Limited Partnership (June 10, 1986).

8 When federal savings associations invest in limited partnerships or corporations that make multiple equity investments in diverse locations, the OTS will not object if the limited partnership or corporation invests no more than a de minimis amount of its funds in projects that are located in areas not covered by Standard 1. Investments will be deemed de minimis only if they do not exceed 10% of all investments made by the limited partnership or corporation. However, all investments of a limited partnership or corporation, even those covered by the de minimis rule, must

Institutions will be able to ascertain what cities in their region are designated as entitlement communities and which nonentitlement communities exist within the State by contacting the HUD office in the region where the investment will be located. Institutions can ascertain which cities or local jurisdictions participate in the Small Cities Program by contacting the appropriate local community planning department or agency or a State or local office of economic development.

It is our understanding that virtually all jurisdictions are covered by one of the foregoing designations. On occasion, however, a State may exclude a particular area from its statewide submissions for CDBG funds. Thus, savings associations investing in nonentitlement areas should confirm that their investments are not in areas that have been specifically excluded by State submissions for CDBG funds. Savings associations should also be aware that two States, New York and Hawaii, have elected not to administer a statewide CDBG program as of the date of this letter. Entitlement communities within these States, however, continue to be covered by the Title I program. Various local governments within these and other States may also receive CDBG funds by participating in the Small Cities Program.

2. The investment must be made in a residential housing project that benefits low- and moderate-income people.[9]

Consistent with Title I regulations, a housing project will be deemed to benefit low- and moderate-income people if at least 51% of the units are reserved for occupancy by low- or moderate-income individuals or families.[10] An individual or family will be deemed to be low-income when they earn less than 50% of the area median income.[11] An individual or family will be deemed to have

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meet each of the other standards stated below.

[9] Although certain non-housing investments are permissible under Title I, all no-action requests that the OTS has received to date concern housing-related investments. Accordingly, investments made under the guidelines articulated here must be in housing. This is consistent both with the housing emphasis of Title I and with the housing mission of federal thrifts. Thrifts that wish to make other investments that they believe are consistent with Title I and with the HOLA may seek case-by-case no-action authorization.

[10] 24 C.F.R. § 570.208(a)(3) (1994).

[11] 60 Fed. Reg. 22156, 22213 (May 4, 1995), to be codified at 12 C.F.R. § 563e.12(m)(1); cf. 24 C.F.R. § 570.3 and 60 Fed. Reg. 1897 (January 5, 1995), to be codified at 24 C.F.R. § 91.5. In several instances herein, we utilize OTS standards that closely

moderate-income when they earn less than 80% of the area median income.[12] If a project is located in a Metropolitan Statistical Area ("MSA") or Principal Metropolitan Statistical Area ("PMSA"), the MSA or PMSA median income will be the relevant area median income. If a project is not located in an MSA or PMSA, the statewide nonmetropolitan median family income will be the relevant area median income.[13]

3. **The investment must be, under all the facts and circumstances, safe and sound.**

It is the responsibility of the association making an investment to ensure that the investment is safe and sound. An association that makes an investment that is unsafe and unsound will not be shielded from supervisory or enforcement action even if all the other standards described here are met. This is true even if the notice described below is given and no OTS objection is raised prior to the investment.

4. **The association's investment in a project (or in a limited partnership or corporation that invests in such projects) may not exceed the association's loans-to-one-borrower ("LTOB") limit.**

Although the LTOB rules do not ordinarily apply to equity investments, the OTS will apply the LTOB limit on a prudential basis to ensure that HOLA § 5(c)(3)(B) investments do not become overly concentrated in a single project or in a single partnership or corporation that invests in low- and moderate-income housing projects.[14]

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approximate HUD Title I standards so as to minimize regulatory burden on thrifts. In each instance, the OTS standard is sufficiently similar to the HUD standard to serve the same policy purpose.

[12] 60 Fed. Reg. 22156, 22213 (May 4, 1995), to be codified at 12 C.F.R. § 563e.12(m)(2); cf. 24 C.F.R. § 570.3 and 60 Fed. Reg. 1898 (January 5, 1995), to be codified at 24 C.F.R. § 91.5.

[13] 60 Fed. Reg. 22156, 22213 (May 4, 1995), to be codified at 12 C.F.R. § 563e.12(b); cf. 24 C.F.R. § 570.3 and 42 U.S.C. 1437f(3)(b)(2).

[14] See 12 C.F.R. § 563.93 (1995). For these purposes, investments by a savings association in more than one limited partnership or corporation organized by the same non-profit organization or promoter will not be aggregated solely because there is a common organizer or promoter. We would reach a different conclusion, however, if the organizer or promoter guaranteed the investment or if the separate partnerships or

5. If the investing association does not qualify for expedited treatment pursuant to 12 C.F.R. § 516.3, it must give at least 14 calendar days notice to the appropriate OTS Regional Director before making the investment.

The association's notice must provide a general description of the proposed investment and must demonstrate that all the standards listed here will be met. The association may proceed with the investment 14 calendar days after notice is received by the OTS regional director, provided no OTS objection has been raised. If an objection is raised, the association must resolve the objection before proceeding with the investment.

6. The investment must conform to the requirements of 12 C.F.R. § 545.41, to the statutory investment caps set forth in HOLA § 5(c)(3)(B), including the aggregate 2% cap on all equity investments made by the association under § 5(c)(3)(B), and to other applicable provisions of law.

Associations that make investments pursuant to the foregoing standards should maintain records documenting compliance with the standards. If an association's investment is made indirectly via a limited partnership or corporation, the association should obtain a written commitment from the partnership or corporation in which it invests indicating that it will comply with Standards 1 and 2 above and must regularly monitor the investment for compliance with these and other standards stated in this letter. Documentation will be reviewed by OTS during periodic examinations.

Questions regarding the foregoing standards may be directed to Susan Miles, Senior Attorney, at (202) 906-6798.

Very truly yours,

Carolyn J. Buck
Chief Counsel

cc: All Regional Directors
All Regional Counsel
All Regional Community Development Liaisons

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corporations invested in the same housing project(s).