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To: Banks Kelly D

Subject: Outline of Remarks for Hearing on Qualified Contracts

The following is an outline of my remarks for the October 15, 2007 hearing on the above topic:

- 1) Introduction and Background
- 2) Responses to Questions raised by the Service
 - A. Buildings sold without underlying land
 - B. Fair Market Value limitation on qualified contract price
- 3) Specific Provisions of the Proposed Regulations
 - A. Definition of Outstanding Indebtedness
 - B. Definition of Adjusted Investor Equity
 - C. Rejection of a contract
 - D. Determination of cash distributions
 - E. Administrative responsibilities
- 4) Matters Not Addressed in the Proposed Regulations
 - A. Bona fide contracts
 - B. Reasonable time to acquire property
 - C. Fair market value of the non low-income portion
 - D. Required documentation
 - E. Calculating the qualified contract price if incomplete records
 - F. Meaning of phrase "only to the extent there was an obligation to invest such amount..."

Thank you.

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9/18/2007

ADOH has no comment because it is unaware of any instance in which a low income building is not owned by a corporation or a partnership within its jurisdiction.

5. The extent of Agency and state authority in providing more stringent requirements than the provisions contained in section 42(h)(6)(F).

The language of the rule should be carefully drafted to foreclose argument that allocating agencies do not have authority to require tax credit applicants to waive their rights to qualified contracts.

6. The authority of the allocating agency to require in agreements a fair market value cap that would restrict any qualified contract price to fair market value.

ADOH believes that it would advance the public interest for the IRS to restrict the qualified contract price to fair market value by using "do not manipulate" language in proposed section 1.42-18(c).

General Comments

7. Qualified Contract Price

- a. The proposed rule should be revised to clearly establish fair market value rather than a return on the owner's investment as the linchpin for determination of the qualified contract price. Concerns about the results of FMV pricing on the qualified contract price should be resolved in favor of preserving affordable properties.
- b. ADOH agrees that valuation of the non-low income portion should take into account recorded restrictions.
- c. In the event that the building remains on the market for a while, FMV should be adjusted down as a means of clarifying how to lower the price for the purpose of paragraph (c)(1).
- d. The Service should provide examples of how the Service will enforce anti-abuse rules to prevent manipulation.

8. Consideration of Qualified Contract Requests

- a. States should retain authority to limit qualified contract requests to properties in compliance.
- b. The rule should preserve States' authority to require the owner to secure waiver of the right to first refusal under paragraph (d)(1)(vi).
- c. Required Submissions
 - i. Language should be added to paragraph (d) permitting the allocating agency to deny requests for qualified contracts when the owner is unable to support the qualified contract price by audited financials since the low income building was placed in service.