



NCSHA
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June 9, 2003

BY ELECTRONIC MAIL

James F. Sloan, Director
Financial Crimes Enforcement Network
Department of the Treasury
Post Office Box 39
Vienna, Virginia 22183-0039
Email: regcomments@fincen.treas.gov

ATTN: Section 352 - Real estate settlements

Dear Mr. Sloan:

I am writing in response to the advance notice of proposed rulemaking dated April 10, 2003, concerning how "persons involved in real estate closings and settlements" should be defined for the purpose of implementing the USA Patriot Act's anti-money laundering provisions. The term "persons involved in real estate closings and settlements" should be defined to make clear it does not cover governmental entities, such as state Housing Finance Agencies (HFAs), established under state law who exercise governmental authority on behalf of a state.

The National Council of State Housing Agencies (NCSHA) is nonprofit organization created to coordinate and leverage the federal advocacy efforts of the nation's HFAs. NCSHA's members are the HFAs of every state, the District of Columbia, Puerto Rico, and the Virginia Islands.

At the center of HFA activity within the states and NCSHA's work in Washington are three federally authorized programs: the Mortgage Revenue Bond (MRB), the Low Income Housing Tax Credit (Housing Credit), and the HOME Investment Partnerships (HOME) program. HFAs have provided affordable mortgages to more than 2.3 million families to buy their first homes through the MRB program. HFAs have also financed more than 2.3 million low- and moderate-income apartments, including more than 1.5 million apartments using the Housing Credit.

HFA programs are targeted to lower incomer families. Congress limits MRBs to first-time homebuyers who earn no more than the greater of their statewide or area median income (AMI). (Families of three or more can earn up to 115 percent of the statewide or AMI.) The cost of an MRB-financed home cannot exceed 90 percent of the average home purchase price in its area. In properties HFAs finance with multifamily

bonds or Housing Credits, at least 40 percent of the occupants must be families with incomes of 60 percent of AMI or less or 20 percent of the occupants must be families with incomes of 50 percent of AMI or less.

Exempting HFAs from the definition of “persons involved in real estate settlements and closings” would not undermine protection against money laundering. The risk of money laundering through HFAs is small. State governmental oversight and involvement in the activities of HFAs serves as a deterrent to those who would seek to engage in money laundering. The special restrictions, limitations, and qualifications imposed on borrowers (such as income and purchase price limits on single-family loans and tenant income and financing restrictions on multifamily loans) seeking to qualify for affordable housing loans underwritten by state HFAs tend to make such loan programs less susceptible to money laundering and less attractive to would-be money launderers than loans underwritten by commercial lenders.

Recipients of HFA funds are lower-income persons who must undergo income verifications and related background checks. The use of HFA funds on their behalf is restricted to buying a mortgage from a lender, making a loan to buy a house under an escrow arrangement with a title company, or making a loan or allocating Housing Credits to an affordable housing multifamily developer under strict underwriting and monitoring requirements. It is unlikely that a terrorist, even if a low-income person who met the income tests, could—or would try to—use an HFA program to launder money.

If these additional rules are forced on HFAs, they would have fewer funds to carry out their affordable housing mission and would have to use scarce resources on training, monitoring, and other administrative costs.

For the reasons outlined above, I hope you will exempt HFAs from the definition of "persons involved in real estate closings and settlements" in any future regulations pursuant to the USA Patriot Act. More broadly, I recommend the regulations exempt governmental entities established under state law and whose activities involve exercising governmental authority on behalf of states.

Sincerely,

A handwritten signature in black ink that reads "Barbara J. Thompson". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Barbara J. Thompson
Executive Director