



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

October 1, 2010

Interpretive Letter #1128
October 2010

Re: Request for Supervisory Non-Objection

Dear [],

This is in response to your letter dated August 27, 2010, requesting that the OCC issue a written notification of the supervisory non-objection for your non-performing asset program. For the reasons discussed below, we decline to approve your program for national banks.

You propose a program in which national banks and other financial institutions would exchange real estate acquired through foreclosure or otherwise in satisfaction of a debt previously contracted (“OREO”) for Class A membership interests in a limited liability company (“LLC”). As part of the exchange, an institution would pay acquisition fees totaling at least five percent of the value of its exchanged OREO. A portion of these acquisition fees would be used to pay for maintenance, rehabilitation, and repositioning of the OREO properties, which would be the responsibility of an asset management company. The remainder of the costs associated with the OREO properties, including the asset manager’s fees, would be covered by leveraging individual properties and the issuance of Class B membership interests to private investors.

Following the payment of expenses, net cash flow from operations would be distributed first to pay participating institutions an annual five percent coupon, and then to participating institutions in an amount equal to their exchanged OREO. Net cash flow would then be distributed to pay the Class B members an annual fifteen percent coupon, and then to the Class B members to recover their investments.

The LLC would be established for a 10-year term. Participating financial institutions would have no role in management of the LLC. Transfer of membership interests would be severely restricted and withdrawal would be prohibited without written consent of LLC management.

As we have previously communicated to you, your proposal raises significant legal, supervisory, and accounting issues which, thus far, have not been satisfactorily resolved. Under the proposal, a participating national bank would acquire an indirect interest in other institutions’

OREO. You have not provided any persuasive arguments that a national bank has the legal authority under 12 U.S.C. §§ 24(Seventh) and 29 to acquire interests in real estate with which the bank has no pre-existing relationship. Even if the bank had such legal authority, the LLC interests acquired in exchange for OREO would be subject to the limitations and restrictions in section 29 and 12 C.F.R. Part 34. Your proposal addresses neither how a participating national bank would be able to dispose of its LLC interests within the required timeframes given the 10-year term of the LLC, nor how participation by a national bank in the LLC – which would “rehabilitate and reposition” the OREO – would comply with the restrictions on expenditures on OREO properties.

Moreover, we have not received any convincing demonstration that participation by national banks in the program you propose can be conducted in a safe and sound manner. Participating institutions pay significant one-time and recurring fees, lose control over their OREO properties, and have no control over additional properties added to the LLC. As Class A members, the participating institutions bear substantially all of the downside risks, especially since the LLC may borrow against individual OREO properties, but have minimal upside potential from the OREO properties. Finally, we have not received any credible arguments that the exchange of OREO for interests in the LLC in your proposal would result in favorable accounting treatment for participating national banks.

For the reasons above, we cannot approve your program for national banks. We remind you, as you committed in your letter dated September 13, 2010, not to use language in your program materials or elsewhere which could result in a reader inferring that the OCC has endorsed or approved your program.

Sincerely,

/s/

Julie L. Williams
First Senior Deputy Comptroller
and Chief Counsel