HAWKINS ADVISORY

EFFECTIVE DATE ISSUES REGARDING SINGLE FAMILY PURCHASE PRICE SAFE HARBORS

On June 16, 2010, we sent to you a ***Hawkins Advisory*** relating to the release of Internal Revenue Service Revenue Procedure 2010-25, which provided updated safe harbor purchase price limits for single family qualified mortgage bonds. For what may be the first time since safe harbor limits have been provided, certain of these limits have decreased from the prior effective safe harbors, including the limit for "all other areas." Included in such ***Hawkins Advisory*** was a copy of the Revenue Procedure which will enable you to determine if any of the areas in your state has decreased.

The effective date for the implementation of newly-released safe harbor limits has not been of concern in the past, when new limits remained the same or were higher than the limits being made obsolete. Failure to implement higher limits by a date certain did not pose a compliance concern. However, now, with many decreases, the effective date of the new limits has important relevance.

The Revenue Procedure provides effective date language that has existed for nearly two decades. The new 2010 limits may be used for commitments beginning June 16, 2010. (Note the permissive "may" makes sense when the new limits are higher than those currently in place). The Procedure goes on to say that the existing 2009 safe harbor limits are no longer valid after June 15th except that they may continue to be used for commitments on or before August 15, 2010 with respect to bonds sold before July 16, 2010. Thus, an issuer that is making commitments for loans to be funded by existing bond issues (whether with unexpended proceeds or recycling money), can use the 2009 higher limits for commitments through August 15th. However, for loans which have been made with non-bond proceeds (e.g., warehouse facility moneys or with issuer's equity), to be purchased into a bond issue that is sold after July 15th (including NIBP escrow releases), such financing does not meet the Revenue Procedure rule for use of the 2009 safe harbor limits, and such loans may have purchase prices higher than the new 2010 safe harbor limits.

The unadjusted limit in the "all other" category decreased by $16,384, from a 2009 safe harbor of $287,434 to a new safe harbor of $271,050, and the decreases for certain other areas (approximately 150 counties/MSAs in total) range from a few hundred dollars to $37,676.

We have brought this problem to the attention of the Internal Revenue Service, especially in light of extensive NIPB warehousing in the hope that a modification will be considered. In the meantime, issuers should examine their warehoused loans and existing commitments in areas where the safe harbor limits have decreased and determine if the purchase prices of any such loans exceed new lower limits. If any such loans exist, issuers should consider whether existing bond proceeds are available for the long-term financing of such loans. A copy of Revenue Procedure 2010-25 is attached. Please contact a member of the Hawkins Housing Group or Tax Department if you have questions about this issue or to discuss your agency's particular situation.

New York
One Chase Manhattan Plaza
New York, NY 10005
Tel: (212) 820-9300

San Francisco
One Embarcadero Center
Suite 3820
San Francisco, CA 94111
Tel: (415) 486-4200

Newark
One Gateway Center
24th Floor
Newark, NJ 07102
Tel: (973) 642-8584

Hartford
20 Church Street
Suite 700
Hartford, CT 06103
Tel: (860) 275-6260

Los Angeles
333 South Grand Avenue
Suite 3650
Los Angeles, CA 90071
Tel: (213) 236-9050

Sacramento
1415 L Street
Suite 1180
Sacramento, CA 95814
Tel: (916) 326-5200

Washington, D.C.
601 Thirteenth Street, N.W.
Suite 800 South
Washington, D.C. 20005
Tel: (202) 682-1480

Hawkins
DELAFIELD & WOOD LLP

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