NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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NAHMA TAX CREDIT PRIORITIES 2011

1. Preserving the Low-Income Housing Tax Credit (LIHTC) program in any tax reform legislation.

2. Advancing the Obama Administration's FY 2012 budget request proposals to improve the Low-Income Housing Tax Credit program.

    a. Income averaging

    b. Basis boost

3. Ensuring the long-term sustainability of LIHTC properties.

4. Creating a single student rule for IRS and HUD housing programs.

5. Reforming the Government Sponsored Enterprises (GSEs).

Please find more detailed descriptions of each NAHMA priority attached.

1. Preserving the Low-Income Housing Tax Credit program in any tax reform legislation.

Created by the Tax Reform Act of 1986, the low-income housing tax credit (LIHTC) program is the primary source of federal funding to construct new affordable apartments. A recent HUD report explained the history of the program as follows:

> "The act [Tax Reform Act of 1986] eliminated a variety of tax provisions that had favored rental housing and replaced them with a program of credits for the production of rental housing targeted to lower income households. Under the LIHTC program, the states were authorized to issue federal tax credits for the acquisition, rehabilitation, or new construction of affordable rental housing. The credits can be used by property owners to offset taxes on other income, and are generally sold to outside investors to raise initial development funds for a project. To qualify for credits, a project must have a specific proportion of its units set aside for lower income households with the rents on these units limited to 30 percent of qualifying income [50 percent or 60 percent of area median income]. LIHTC investors claim credits to offset taxes otherwise owed for each year of a 10-year period…."[1]

LIHTC apartments are rent-restricted and income-restricted for a minimum of 30 years. State agencies oversee the allocation of the Credits, and they monitor the properties' compliance with the program requirements. Investors who buy the Credits add private sector oversight during the initial 15-year federal compliance period, during which the IRS can recapture the credits for non-compliance.

The LIHTC program is an example of a successful public-private partnership. HUD estimates an average of almost 1,450 projects and 108,000 units were placed in service in each year of the 1995 to 2007 period. According to the National Council of State Housing Agencies, the Credit's incentive for private sector investment has helped finance more than 2.4 million apartments for low-income families since 1986. The program has generally functioned well as a vehicle to provide new workforce housing and to preserve older HUD-assisted and rural properties. Moreover, the National Association of Home Builders estimates the program has added approximately 90,000 full time jobs per year across all U.S. industries, as well as generating tax and other revenue to local economies.

NAHMA is aware that comprehensive tax reform will receive serious consideration in this Congress. One proposal that is already receiving attention in the House of Representatives is the *Report of the National Commission on Fiscal Responsibility and Reform*[2], released in December 2010. The Commission's report proposed eliminating all tax expenditures for businesses, which included the LIHTC, in order to lower the corporate tax rate. The House Budget Committee's FY 2012 budget resolution also calls for reducing or eliminating many tax credits, deductions or other tax expenditures in order to lower the overall corporate tax rate. The Senate may also include similar proposals to in its FY 2012 budget resolution.

NAHMA will strongly oppose legislation that would eliminate the LIHTC program. NAHMA believes the LIHTC deserves the continued bipartisan support it has received for nearly 25 years. It has a proven record of success as a new production and preservation program. At a time when federal appropriations for housing programs face budget cuts, and the LIHTC program is finally rebounding from the crisis in the financial markets, Congress should not entertain ideas to eliminate the LIHTC. It is essential for Administration officials to be strong advocates of this program, since any serious talk of eliminating the LIHTC is counterproductive to the efforts of syndicators and industry groups to attract new investors.

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[1] *Assessment of the Economic and Social Characteristics of LIHTC Residents and Neighborhoods, Final Report.* Prepared by Abt Associates Inc. for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research; February 28, 2000.

[2] The National Commission on Fiscal Responsibility and Reform was charged with identifying policies to improve the fiscal situation in the medium term and to achieve fiscal sustainability over the long run. It was made up of both Democrats and Republicans appointed by President Obama.

The Housing credit program is working. It produces jobs, raises revenue for local economies, provides quality rental housing for working families, and creates a voluntary tax incentive for businesses to invest in affordable housing communities.

As Congress considers comprehensive tax reform plans, NAHMA asks the Treasury Department to:

- **Strongly oppose any proposal to eliminate the Low Income Housing Tax Credit program.**

2. Advancing the Obama Administration's FY 2012 budget proposals to improve the Low-Income Housing Tax Credit program.

In President Obama's FY 2012 budget request, the Treasury Department included two LIHTC proposals intended to help create stronger mixed-income communities and to make the LIHTC a more effective preservation tool for older HUD-assisted and Rural Development properties. These ideas have been well-received by NAHMA members.

First, the income -averaging proposal would allow new LIHTC projects to be occupied by individuals or families earning up to 80 percent of the area median income (AMI), so long as they are offset by units occupied by individuals or families earning less than 60 percent of AMI, resulting in an average of 60 percent of AMI. Increasing income-mixing at the project level will offer greater opportunities for lower-income tenants to live in quality affordable housing.

NAHMA agrees with the justifications HUD and Treasury provided for the income averaging proposal. Specifically, we share the opinion that this policy change would:

- Allow greater income-mixing at the project level, creating opportunities for workforce housing;
- Better align the LIHTC with HUD's and USDA's affordable housing programs, which define low-income at 80 percent of AMI; and
- Help create and preserve more units targeted to the lowest income households.

Second, the basis boost proposal would make the 4% credit a more viable source of funding for affordable housing preservation. It would provide qualifying properties a 30% basis boost to facilitate preservation, recapitalization, and rehabilitation of existing affordable housing. By providing higher yields, the credits will generate more interest in LIHTC preservation deals and increase the equity in the properties. Likewise, the basis boost will make the LIHTC program more user-friendly with other federal rental programs.

For example, extremely low-income households often cannot afford to live in tax credit properties unless they have rental assistance, like a housing choice voucher. In addition, the Administration has admitted that the basis boost change for 4 percent bond credits will have little impact in small states. Nevertheless, NAHMA is heartened by the Administration's support for the LIHTC program and we look forward to examining the proposals and sharing them with NAHMA members for feedback.

NAHMA supports the income averaging and basis boost proposals. As the Obama Administration works with Congress to draft the legislative language, NAHMA requests that the Department of Treasury:

- **Continue to engage multifamily industry stakeholders in discussions related to the proposals and the draft legislation;**

  - **Additional thought may be necessary to make these ideas work effectively. For example,**
    - **Will the income averaging make LIHTC units more affordable to unassisted renters with extremely low incomes (less than 30 percent of AMI)?**
    - **How can the basis boost for 4 percent bond credits have a greater impact in small states?**

- **Continue to advocate for these important reforms in Congress.**

3. Ensuring the long-term sustainability of LIHTC properties.

The LIHTC program has been very successful to date. NAHMA supports the innovative ideas proposed in the FY 2010 budget which build on the program's effectiveness as a preservation tool for assisted properties. Nevertheless, we urge the Administration to also develop thoughtful approaches to ensure long-term sustainability for the current portfolio of Housing Credit properties and continued viability of the LIHTC program.

A major challenge to ensuring long-term sustainability of LIHTC properties is that there are very limited opportunities to increase cash-flow as the buildings age or as operating costs rise. The economic model for these properties calls for a long term commitment to house low income families in a substantial number of rent-restricted units. Maximum rents for the low-income units cannot exceed 30 percent of 60 percent of AMI (or 30 percent of 50 percent AMI if the owner chose the 20-50 minimum set aside). Also, the properties must commit to a minimum 30-year long-term affordable use agreement which includes the 15-year federal compliance period and a minimum 15-year extended use agreement. In practice, however, states often call for deep skewing on incomes as well as longer extended use agreements. Unfortunately, stagnant incomes in many market areas for LIHTC properties have not allowed for meaningful rent increases.

Limited cash flow becomes a serious challenge as properties age or as operating costs rise. Regardless of whether apartments are affordable, conventional or luxury, properties generally need rehabilitation every 20 to 30 years. Under the current regulatory requirements, Housing Credit properties have fewer options to raise the necessary funds—especially if operating costs rise due to factors beyond the owner or management agent's control. The challenge of simultaneously maintaining the physical condition and financial health of the property is also not unique to either for-profit or non-profit housing operators. In fact, NAHMA has heard considerable concerns about these problems from many of our largest for-profit and non-profit members.

These challenges associated with ensuring long-term sustainability for existing LIHTC properties are systemic. NAHMA strongly believes it will take more than creative management or aggressive cost-cutting to address these problems. Recent changes such as updating the utility allowance regulation and holding-harmless LIHTC income limits were positive steps in the right direction. NAHMA would welcome the opportunity to engage Treasury officials and other stakeholders in additional conversations to develop additional solutions.

NAHMA strongly urges the Treasury Department to work with multifamily owners, management agents and other interested stakeholders:

- **To consider a variety of policy options which would help to ensure long-term physical and financial sustainability for existing LIHTC properties.**

4. Creating a single student rule for IRS and HUD housing programs.

The student occupancy rules for both the Section 8 program and the Low Income Housing Tax Credit (LIHTC) are intended to ensure that qualified families are not displaced by college students who need affordable off-campus housing. Where these occupancy requirements conflict is in the treatment of student households.

HUD's policy establishes criteria which generally allow an adult resident to pursue an education as long as he or she meets the Section 8 program and income qualifications. If the resident is a tax dependent of his or her parents, the parents must also be income-qualified for Section 8. No distinction is made between part-time or full time students for HUD's occupancy requirements. The rules for Section 8 assistance, found at 24 CFR 5.612, apply to both project-based Section 8 and vouchers:

> No assistance shall be provided under section 8 of the 1937 Act to any individual who:
> (a) Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);
> (b) Is under 24 years of age;
> (c) Is not a veteran of the United States military;
> (d) Is unmarried;
> (e) Does not have a dependent child;
> (f) Is not a person with disabilities, as such term is defined in section 3(b)(3)(E) of the 1937 Act and was not receiving assistance under section 8 of the 1937 Act as of November 30, 2005; and
> (g) Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under section 8 of the 1937 Act.

On the other hand, the LIHTC program prohibits full-time student households from living in a low-income unit unless they satisfy one of the statutory exemptions. If one person is living in a LIHTC unit, and that person is a full-time student, he is a full-time student household who may be ineligible for occupancy.
Current law prohibits households made up entirely of full-time students from living in LIHTC apartments, even if the unit is also receiving HUD assistance. Only narrow exceptions exist under Internal Revenue Code Section 42(i)(3)(D) for families who are:

- Receiving Temporary Assistance to Needy Families (TANF);
- Enrolled in a federal, state or local job training program;
- Students leaving foster care;
- Single parents and their children, provided that such parents are not dependents of another individual and such children are not dependents of another individual except for their other parent; or
- Married full time students who file a joint return.

The conflicting treatment of students is becoming a greater concern for O/As of mixed-finance multifamily properties. As LIHTCs are used to preserve and recapitalize older HUD-assisted properties, O/As are concerned that residents who are full-time students may be displaced under the LIHTC rules. For example, if a single adult who is the sole member of the household is a full-time student living in a project-based Section 8 property that is awarded LIHTCs, there is not definitive guidance about whether the resident may continue to live in the property after the LIHTCs are awarded. Similarly, a prospective tenant who receives a Section 8 Housing Choice Voucher may have to be denied if he or she is a full-time student.

NAHMA strongly urges the Treasury Department to:

- **Work with HUD, Congress and multifamily industry stakeholders to propose a uniform student occupancy policy for all federally-regulated properties which will permit residents to pursue educational opportunities and to climb the economic ladder.**

5. Reforming the Government Sponsored Enterprises (GSEs)

In the February 2011 joint report to Congress, “Reforming America’s Housing Finance Market,” issued by the Treasury Department and HUD, the Administration described three potential options for government involvement in the future housing finance market. Government involvement in the housing finance system would be limited to:

1. Offering insurance and/or assistance through FHA, USDA, and Department of Veterans’ Affairs’ to narrow groups of borrowers;
2. Providing targeted groups assistance though FHA, USDA, and Department of Veterans’ Affairs and creating a guarantee mechanism for times of crisis; or
3. Providing assistance to low and moderate income borrowers through FHA, USDA, and Department of Veterans’ Affairs and providing catastrophic reinsurance behind significant private capital.

After considering these options, NAHMA signed an industry letter which advocated certain principles for restoring stability to the nation’s housing finance system. The letter acknowledged, “Private investment capital is critical for a robust and healthy mortgage marketplace, and the current government-dominated mortgage system is neither sustainable nor desirable,” but, “Some continuing and predictable government role is necessary to promote investor confidence and ensure liquidity and stability for homeownership and rental housing.” The letter explained,

> “As critical as it is to attract private money to the mortgage markets, an appropriate and clearly defined role for the government is essential to preserving financial stability. Government support through various insurance and guarantee mechanisms is especially important to facilitate long-term fixed-rate mortgages, affordable financing for low- and moderate-income borrowers, and financing rental housing in all parts of the country including rural areas. While the goal should be to move toward a largely private secondary market, the private and public sectors should work as partners in creating a variety of financing options to ensure the availability of safe, stable, and affordable financing.”

In the immediate future, NAHMA is concerned about the impact of GSE reform on existing affordable properties. Prior to the financial crisis in 2008, the largest purchasers of Low Income Housing Tax Credits had been Fannie Mae, Freddie Mac and the large banks. Those firms represented more than half of the marketplace. As the Treasury Department winds down GSE operations, we strongly urge officials to guard against a potential "fire sale" of LIHTC assets at below market values.

In working to create a more stable mortgage financing system, the Administration should:

- **Seek to ensure a workable balance between sound underwriting principles, consumer protection and the need for responsible innovation and risk-taking;**
- **Proceed with changes to the mortgage finance system carefully and over a reasonable transition period to ensure that a reliable mortgage finance system is in place to function effectively in the years ahead; and**
- **Ensure that LIHTC assets are not devalued as the GSEs wind down operations.**