July 2, 2008

The Honorable Christopher J. Dodd, Chairman
The Honorable Richard C. Shelby, Ranking Member
Committee on Banking, Housing & Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Dodd and Ranking Member Shelby:

The undersigned groups are writing in support of the attached changes to Federal Housing Administration (FHA) multifamily mortgage insurance programs which will provide regulatory relief and improve the delivery of the Low Income Housing Tax Credit (LIHTC) with FHA insurance. These changes will lower costs and expedite processing to allow the development and rehabilitation of affordable rental housing in this time of market turmoil and increased need for rental housing.

As the Banking Committee considers housing legislation, we strongly urge you to include the following provisions, which were included, with bi-partisan support, in the House-passed version of the omnibus housing bill:

Eliminate subsidy layering reviews. The House bill amends current law which requires HUD to conduct a subsidy layering review when "subsidies' (which includes FHA insurance) are combined with tax credits. HUD's subsidy layering requirements are redundant and unnecessary because Housing Finance Agencies carefully review all tax credit deals under the Internal Revenue Code requirement that states not allocate more credits to a property than is necessary to make it feasible. Additionally, we do not believe that FHA mortgage insurance should be considered a "subsidy" since the programs more than cover their costs.

Revise requirements for cost certification. The National Housing Act requires that the mortgagor certify to FHA all costs of the project, at the end of the construction period, to assure that the mortgage amount does not exceed the statutory loan to cost ratio. This process is costly and time consuming. While this process may be a reasonable safeguard for many insured loans, developments with low-income housing tax credits have significant equity contributions from the tax credit proceeds. Therefore, it is extremely unlikely that any loan with tax credits would approach the statutory loan to cost ratio. To assure that the statutory ratio is not exceeded, the House housing bill would eliminate cost certification only in those cases where HUD determines at the firm commitment stage that the loan to cost ratio based upon budgeted costs is less than 80 percent.

Adjust Rules Related to Use of Equity. FHA multifamily mortgage insurance rules require that LIHTC equity be used first, before any proceeds insured by FHA. LIHTC investors pay less for the credits if the equity contribution cannot be phased in over the course of construction and lease-up. The end result is less equity for the project (we estimate approximately five cents per dollar of tax credits). Allowing the phasing-in of the LIHTC equity would be a significant improvement. This is one of the most significant impediments to utilizing HUD mortgage insurance programs with low income housing tax credits, especially for the 9 percent LIHTC properties where the equity contribution is far greater than the loan amount. The House housing bill prohibits HUD from requiring cash up-front for the entire equity contribution.

Eliminate Duplicative Asset Administration Requirements. In many cases, the asset administration requirements of FHA are similar to the tax credit requirements, but both are imposed on the property. For example, FHA requires annual physical inspections by Real Estate Assessment Center (REAC) certified inspectors in accordance with REAC requirements. In addition, housing credit agencies also require annual physical inspections to meet requirements of Section 42. This is costly, unnecessary and an inconvenience to tenants who must accommodate two separate inspections of their apartment. The House bill eliminates this duplicate inspection requirement and charges the Secretary to accept another agency's compliance monitoring "to the extent that the Secretary determines such monitoring is sufficient to ensure compliance with any requirements established by the Secretary." This approach follows the model used by the Federal Home Loan Banks related to the Affordable Housing Program (AHP).

Pilot Streamlined Processing Program. A significant issue for LIHTC developers using FHA insurance is that the approval process for FHA insurance, even using Multifamily Accelerated Processing (MAP), is too long to meet the time deadlines accompanying the allocation of LIHTCs. Without some adjustment in the FHA review and processing requirements to expedite their approval process, FHA will never be an effective tool for financing properties with LIHTCs.

The House housing bill includes a pilot program for processing applications for FHA mortgage insurance that involve low income housing tax credits. Under this pilot program, HUD would not undertake detailed reviews of the loan application in a multi-step process as is currently required. Rather, a "chief underwriter" would be designated in HUD field offices to review multifamily loan insurance applications submitted by approved mortgagees. The position of chief underwriter would be solely responsible for the review of the lender submittals and would rely upon all third-party reports submitted by the approved lender who will use procedures established under FHA program standards. This approach would be similar to that which conventional lenders use when they underwrite loans for their own portfolios or for sale in the secondary market. As an additional check on loan quality, HUD lender monitoring and oversight associated with this program would be a post-closing review process, utilizing procedures currently established by the Department.

We do not anticipate that this new process will have an adverse affect on loan quality or on the FHA insurance fund. Developments with LIHTCs generally have an extremely low loan-to-value ratio and virtually never go into default. All incentives for the lender and the investor are to keep the property viable and the loan performing.

****

These changes will not cost the government additional funds or expand any government programs. They are simply good government and regulatory relief measures, allowing FHA and those companies and agencies utilizing the FHA and LIHTC programs to operate more efficiently and effectively.

The organizations listed below strongly endorse the attached provisions contained in the House omnibus housing bill and ask that you consider including these provisions in any housing bill passed by the Senate. We look forward to working with you on this important legislation.

Sincerely,

Affordable Housing Tax Credit Coalition
American Association of Homes and Services for the Aging
Council for Affordable and Rural Housing
Council of Large Public Housing Authorities
Enterprise Community Partners
Institute for Real Estate Management
Mortgage Bankers Association
National Affordable Housing Management Association
National Apartment Association
National Association of Home Builders
National Association of Housing and Redevelopment Officials
National Housing Conference
National Leased Housing Association
National Low Income Housing Coalition
National Multi Housing Council
Stewards of Affordable Housing for the Future