

December 28, 2010

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW., Room 10276
Washington, DC 20410-0500

RE: 24 CFR Parts 91 and 92, Housing Trust Fund, Proposed Rule,
Docket No. FR-5246-P-02,

Dear Ladies and Gentlemen:

On behalf of the LIHTC Working Group, I am writing to you to comment on Docket No. FR-5246-P-02, the Housing Trust Fund, Proposed Rule. The low income housing tax credit (LIHTC) is a federal tax credit used to help fund affordable housing in the United States of America. The LIHTC Working Group consists of LIHTC industry participants including developers, syndicators, investors, accountants and lawyers. The group works to resolve technical and administrative LIHTC program issues. With this letter, the members of the group hope to convey our thoughts on the proposed regulations being drafted to govern the Housing Trust Fund (HTF) and request that you consider our ideas when making any changes.

Overall, we applaud the U.S. Department of Housing and Urban Development's (HUD) efforts to create regulations for the HTF that are flexible and not overly burdensome. We agree that codifying the HTF regulations in a new subpart N of 24 CFR part 92, where Part 92 contains the regulations for HUD's HOME Investment Partnerships program, makes logical sense. We believe that where possible, providing guidelines to the grantees, but leaving the flexibility to implement those guidelines in their hands, is the best way to bring assistance to areas that have different and urgent needs.

More specifically, we support HUD's efforts to set aside a majority of the funds for new construction, while recognizing that projects may need operating subsidies to help support extremely low-income (ELI) and possibly very low-income (VLI) residents. The purpose of the HTF, as stated in the Housing and Economic Recovery Act of 2008, is "to increase and preserve the supply of rental housing for extremely low- and very low-income families." Many affordable projects are having a difficult time finding development sources, and the HTF can bridge the funding gaps so that projects can be completed. In the case where ELI rents are not sufficient to cover operating expenses, the HTF can help support these properties, but we agree that providing a lot of operating subsidies could quickly expend each state's HTF allocation.

Furthermore, we appreciate that the regulations were left flexible so that grantees can allocate the funds based on the priority needs of their jurisdiction. We understand that HUD's Fiscal Year 2010-15 Strategic Plan to promote energy-efficient buildings and location-efficient communities

are guiding principles, and we applaud them, but we concur that the HTF should be as in line with the Strategic Plan as possible while being directed towards the priority needs of the jurisdictions. One concern would be that if it was mandatory to give preferences to transit oriented development that rural areas may not have access to the HTF, even though they may need the funds the most.

The LIHTC Working Group appreciates that in the supplementary information HUD mentioned that the HTF can be used with LIHTCs. As mentioned in a previous letter to HUD, we believe that it would be beneficial if funds from the HTF were used in conjunction with LIHTCs to fund affordable housing. Currently, many LIHTC developments have financing gaps that the HTF could fill. In addition, the HTF could benefit from the high amount of oversight in the LIHTC program, due in large measure to the public/private partnership nature of the LIHTC. Also, LIHTC transactions involve private investors who serve as an additional backstop to foreclosure and provide supervision to control operating costs. LIHTC properties have enjoyed very low default rates as well as high cost effectiveness compared to other government supply-side housing programs. By combining the HTF with the LIHTC, the HTF could benefit from the successes of the LIHTC program.

Again, we wanted to stress our appreciation for HUD's focus on creating regulations that allow grantees freedoms to determine how best to use the funds. We believe this approach will help the funds flow to where they are needed the most while helping to move forward the development and preservation of affordable rental housing. Lastly, we would appreciate an opportunity to comment on any changes to the regulations governing the HTF before the regulations are finalized.

Thank you for your time, and we are available if there is any way we can be of assistance. Please feel free to contact Michael Morrison (415) 356-8025.

Very truly yours,

The LIHTC Working Group

THE LIHTC WORKING GROUP