ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT, INC.

April 10, 2009

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Executive Secretary Feldman,

We are writing in regard to FDIC's request for comments on the proposed plan for Public-Private Investment Funds (PPIFs) and the Legacy Loan Program.

The Association for Neighborhood and Housing Development (ANHD) is a membership organization of 97 New York City non-profit neighborhood housing groups. Our mission is to ensure flourishing neighborhoods and decent, affordable housing for all New Yorkers.

In recent years, neighborhoods throughout New York City have seen a dramatic rise in the harassment of tenants, as landlords try to illegally remove working families to raise rents. ANHD found a direct connection between this increase in harassment and the rise of a new type of buyer of New York City real estate. These new buyers are private equity-backed investors who are raising money from Wall Street-type funds that create a pressure for profit levels that, in rent regulated buildings, can only be achieved by illegally displacing tenants and undermining affordability. Many of the lending institutions that had been providing the huge loans for the purchase of these buildings were pooling and re-selling the loans in commercial mortgage-backed securities.

According to our estimates, private equity-backed developers have, in the past four years, purchased 90,000 units of affordable rent regulated and subsidized housing. This is a significant percentage—almost 10%—of our rent regulated housing and represents a major threat to affordable housing and stable communities. While this investment model is seriously threatening New York City's affordable housing stock, we believe this destructive model has also occurred in other high market cities including San Francisco, Los Angeles, Boston, Chicago, and Washington DC.

The Risk to Multi-Family Properties

ANHD has obtained detailed loan underwriting information for the 35% (27,000 units) of the predatory equity-backed deals that were purchased with bank loans and subsequently pooled in a commercial mortgage-backed security. For these loans, detailed information about the underwriting assumptions on which the loans were based is available by searching public records of the Securities and Exchange Commission (SEC).

ANHD also obtained information from the Trepp Financial Data Service Company that tracks which of these loans was placed on a "default watch list" by the loan servicer. A full 60% of these loans are on the servicer's default watch list. This compared to a watch list average of 20% of all other loans that were pooled in commercial mortgage-backed securities in the same year. This makes predatory equity loans three times more likely to be on a default watch list than other commercial loans in the same security pool.

Although we only have detailed underwriting and servicer's watch list information for the 35% of predatory equity loans that were pooled into securities, it is reasonable to assume that most of the 90,000 regulated apartments purchased by predatory equity developers share similar characteristics. A 60% watch list rate therefore suggests that up to 54,000 New York City apartments may be in danger of default. This default crisis will have destructive, destabilizing effect on tenants, affordable housing, and communities in New York City and across the country.

Indeed, when an owner defaults on financing, a property typically falls into physical distress. These distressed projects in turn depress the block in which they are located, and the neighborhoods in which they are concentrated. Another very real consequence of a default crisis is that local credit markers may be destabilized, and financial institutions will be unwilling to make the healthy investments that are necessary in affordable rental housing. Ultimately, it is low and moderate income tenants, who bear no responsibility for the irresponsible overleveraging of the buildings in which they live, that will suffer.

The Solution

ANHD has worked closely with our member groups as well as the Partnership to Preserve Affordable Housing to identify, organize, and stabilize many of the properties purchased by these predatory equity investors. However, finding and implementing a systemic solution to the threat posed has proved challenging. We are therefore encouraged by the Administration's proposed Public-Private Investment Fund (PPIF) and the Legacy Loan Program.

As it is currently proposed, however, the PPIF does not adequately address the toxic assets associated with these predatory equity-backed securities nor establish guidelines to protect the assets and tenants. For these reasons, we urge you to create a Multi-Family Preservation Program that will assist with de-leveraging these assets and bring relief to hundreds of thousands of low and moderate income renters across the country. We believe this program should be guided by the following principles:

- There must be an "orderly de-leveraging" of these assets by finding a preservation purchaser for a defaulting building. This means that the lender must sell the loan at a highly discounted rate, based on the current rental roll and reasonable reserve payments and debt service, to a preservation purchaser. The government must deploy creative strategies in order to have the leverage to ensure this outcome.

- On properties where debt does not meet the "fair market value" test, lenders will be required to perform a physical inspection of the asset in consultation with HUD or a HUD-designated unit of local government. A failed physical inspection will trigger a "regulatory default" and the property should be placed into foreclosure.

- If borrowers are in financial default, lenders should be compelled to seek swift foreclosure actions.

- In the event that a loan modification is negotiated which results in debt forgiveness for an existing borrower or a preservation purchaser, they should be required to enter into a long term use agreement with HUD, or a HUD designated unit of local government, that ensures the long-term financial health, physical integrity, and affordability of the mortgaged property.

- In all cases, final disposition of this targeted housing stock must include protections for renters and use restrictions to ensure the long-term financial and physical health of the properties.

In an effort to achieve these outcomes, the FDIC may consider creating a special purpose entity to carve out these assets, and resell them pursuant to the principles stated above. This would be similar to the Resolution Trust Corporation used in the clean up the savings and loan problems of the late 1980s.

We also believe it is crucial that the FDIC work with other regulatory agencies to establish new guidelines for financial institutions that require lending on rent regulated multi-family properties be based on realistic underwriting assumptions. New York State law already specifies such regulations for residential lending on single-family homes. Because commercial loans are assumed to take place among sophisticated entities, not mom-and-pop home buyers, commercial loans are largely unregulated. However, as we have seen, predatory equity loans are actually residential loans, and mom-and-pop tenants in multi-family properties are victimized as much as they are in the residential loan sub-prime crisis.

If you wish to discuss these comments, please do not hesitate to call me at (212) 747-1117 x17. Thank you for your consideration.

Sincerely,

Benjamin Dulchin
Executive Director