Testimony of Yavapai-Apache Nation Chairman Jamie Fullmer

Committee on Financial Services
Subcommittee on Housing and Community Opportunity

"Removing Barriers to Homeownership for Native Americans"

July 31, 2006

Good Morning Chairman Ney and Congressman Renzi and welcome to the Yavapai-Apache Nation. We appreciate the opportunity to address you with our concerns in this forum. We have three main issues we'd like to present for your consideration.

We see some very real and practical barriers to Native American homeownership, and having examined the situation carefully through our Tribal Housing Department, we see some potential solutions.

First, income requirements for participation in government subsidized programs need to be increased. Current income levels are at or below poverty levels and discourage self-sufficiency and self-determination. Each Federal and State Government Agency authorizing grant awards for housing Native American families have different income thresholds for qualifying. This needs to be changed to one acceptable income standard.

Under current law anyone seeking tax credits must use the Area Median Income (AMI) for the county in which the project is located as the benchmark for setting income eligibility and maximum rents. This creates a real hardship for areas which already have a very low median income. As you know, most states, including Arizona, require that tax credit applicants agree to serve families with incomes well below the federal maximum of 60% of AMI. If an applicant from the Phoenix Metropolitan Statistical Area (MSA) agrees to serve families at 40% of AMI, the income can be as high as $24,040 for a family of four. However, a similar applicant from Navajo County would find the income for a family of four at 40% AMI to be only $16,400. For a project in Yavapai County, the income is only $19,320, fully $4,720 less than a project in the Phoenix area. That is a substantial difference and places a huge burden on the applicant from the lower income area. Of course, most Indian reservations are in very low income areas and this rule has a disproportionate effect on tribal tax credit projects.

We would like the Tax Credit program to more closely follow the NAHASDA guidelines, which allow for the use of the higher of the statewide median or the county median income. That way projects in very low income areas, particularly Indian tribes, would not be at such a competitive disadvantage to applicants from higher income areas. This would be a simple modification to Section 42 and I think no one would dispute the need for this change.

Secondly, while Section 42 was modified in 2000 to provide that NAHASDA funds could be used in tax credit projects, just as HOME program funds can be used, there remains a problem for projects that are operating and do not have sufficient income from tenants to cover all of their operating expenses. As you know, under NAHASDA rules, if a tax credit project utilizes NAHASDA funding the TDHE can charge no more than 30% of the applicant's income for rent, including utilities. Because many tribes serve families directly from their waiting lists and have political pressures to serve the very lowest income tenants first, they can never hope to receive enough income from rent receipts to cover all of their operating expenses.

Compounding this problem is that generally grants made from federal funds such as NAHASDA, needed in order to operate the project after it is built and occupied, cause a reduction in tax credits available to a project. This will reduce investor equity, which will make the projects much more expensive and impractical for TDHEs. The IRS put forth a regulation saying certain types of rental assistance, including HUD Section 8, do not require a reduction in tax credits. The regulations also provide that, from time to time, the IRS will announce other types of rental assistance that are funded from federal sources but do not require a reduction in tax credits. We would like to request that the IRS add NAHASDA rental assistance to that list. The argument is that NAHASDA replaced HUD financing (including Section 8) with respect to Indian country and NAHASDA rental assistance should be treated like Section 8.

The IRS has already reviewed the NAHASDA statute and has questioned whether, and under what circumstances, rental assistance could be funded from NAHASDA funds. Accordingly, they have simply asked that HUD promulgate a "rule" to clarify the situation. If that rule existed, the IRS could add "Rental assistance funded by NAHASDA pursuant to Rule ___". Without a rule to refer to, IRS is apparently uncomfortable. They do not want to give a blanket OK to anything that might be funded by NAHASDA.

This type of rule or regulation change is particularly important for TDHEs with nominal rental collection. As an example, one tribe spends an average of approximately $4,000 to manage and maintain each home it manages. Furthermore, the reservation, like many, is plagued by high unemployment and under employment. This particular TDHE averages about $60 per month or $720 per year in rental collection per unit. On the non-LIHTC units, NAHASDA funds subsidize the difference of $3,280 per unit. However, currently the TDHE cannot subsidize the LIHTC units with NAHASDA. Therefore, the TDHE must access non-federal funds to subsidize the partnership. This has two disastrous affects 1. Poorer TDHEs are ineligible for the LIHTC program 2. This limits the number of LIHTC homes that a TDHE can operate since most tribes have a limited amount of non-federal funding.

Inasmuch as HUD Section 8 and NAHASDA are similar, the suggested HUD rule will allow the IRS to add NAHASDA to its list of rental assistance that does not cause a reduction in credits. The Office of Native American Programs has been looking at this issue for over 4 years now but has not gotten around to notifying the IRS of the rule. Again, there should be no opposition to this simple change.

Third, land and land lease issues are a major barrier to Native American homeownership. Currently The Bureau of Indian Affairs, (BIA) reviews, approves and records all land leases and other land-related documents. In the case of the Yavapai-Apache Nation, one BIA agency regional office handles these tasks for the entire northern half of the state of Arizona. The agency office employs one individual to handle this activity for all of the Native American nations residing in this area, a total of 38 Native American nations.
While counties in the northern half of the state of Arizona can record land documents, i.e. deeds and rights-of-way for non-reservation land in approximately 30 days, it can take the BIA upwards of one year to complete the same type of transaction. This indicates several points, lack of trained personnel, lack of adequate working procedures and a lack of commitment by the agency. Title Status Reports, (TSR) are requirement for compliance with federal funding by several programs, i.e. Low Income Housing Tax Credits. The Yavapai-Apache Nation has applied on several occasions for TSR's, some of which have never been received and others have taken as long as two years to receive. This level of performance must be improved to allow participation in these programs.

The Federal Government Housing Subsidy application must be streamlined. Reduce the review and approval lead time required by the granting agencies to allow more creditable and quantifiable data submission with applications. Currently the delays in awarding these grants cause errors in cost estimates and development schedules. As a result costs increase and project dynamics are curtailed.

Finally, as I'm sure you're aware, federal program reporting requirements are laborious, complicated and needlessly verbose. Everyone agrees that grant dollars must be accounted for and all expenditures paid with grant funds approved. However, progress reports should show progress from one period to the next with an upward spiral for completion and compliance and not recanting every activity from the previous reporting periods. This type of activity is non-productive and inflationary.

We thank you for your time and consideration. I'm available for questions now, if you have any. And I'll leave a copy of these remarks with you, for your reference. Thank you.