January 16, 2002

Mr. Alfred Pollard
General Counsel
Office of Federal Housing Enterprise Oversight
Fourth Floor
1700 G Street, NW
Washington, DC 20552

Dear Mr. Pollard:

Berkshire Mortgage Finance ("BMF") would like to thank the Office of Federal Housing Enterprise Oversight ("OFHEO") for promptly addressing many of the concerns that were communicated through the Mortgage Bankers Association of America relating to the treatment of multifamily loans in the final risk-based capital rule ("rbc"). The proposed improvements go a long way towards making capital requirements consistent with risk without creating a significant competitive disadvantage to government sponsored enterprises ("GSE's). However, we would like OFHEO to consider further improvements to the rule in a few areas, which I have summarized below.

Counterparty Risk

The haircut and phase-in modifications are appropriate and a step in the right direction as this was a major problem with the original rule. However, even with the modifications, we believe haircut levels remain high relative to the risk and the differences between ratings classifications remains too large. One method to correct this would be to modify the loss assumptions. The existing loss assumptions appear to be based on depression-era standards. We think OFHEO should use loss rates based on the stress period OFHEO has used for other provisions in the rule. The use of a depression-era standard seems to contradict the part of the statute mandating the rbc that directs OFHEO to determine aspects of the stress test not specified by the statute in a manner which is reasonably consistent with the regional stress period and based on historical evidence.

We strongly support another improvement in the counterparty risk provisions that directly relates to Fannie Mae DUS lenders. Unrated DUS lenders are treated as BBB counterparties. Under the proposed amendment, OFHEO has discretion to consider other factors and improve this rating. The amendment would allow OFHEO to permit a higher rating than BBB for seller-servicers if they maintain a fully funded reserve account which is equal to, or greater than, the amount OFHEO deems to be adequate to support the risk borne by the seller-servicer. In addition to the reserve accounts, we urge OFHEO to take into account the capital of the seller-servicer and the value of their servicing portfolio. Fannie Mae DUS servicing includes a large premium for shared risk and this premium is available to Fannie Mae to support the counterparty risk. Fannie Mae explicitly recognizes this value when computing required capitalization. Ignoring the servicing value might give Fannie Mae a basis to increase the capital requirements for DUS lenders, which would put privately held companies such as BMF at a disadvantage.

ARM's

We strongly support the proposed changes to the ARM Flags and the Underwater Debt Coverage Ratio Flag. These changes mitigate the punitive levels of capital assigned to ARM loans under the original rule and reduce the volatility of required capital. We urge OFHEO to continue to examine capital requirements related to ARM loans. Even with the proposed amendments, we believe the rule continues to assign capital levels in excess of the actual risk.

Low Income Housing Loans

We support OFHEO's efforts to accurately model the risks in low income housing loans, including loans to projects accepting Section Eight vouchers. This housing remains a critical need, and it is extremely important to carefully balance the risks and not create disincentives for GSE's to be market leaders in affordable housing lending.

Thank you for the opportunity to provide feedback before publishing the final regulation. We would appreciate OFHEO further considering the comments outlined above.

Sincerely,

Peter F. Donovan
Chief Executive Officer