Toi Roberts: Hello, and welcome to the Federal Housing Finance Agency's 2022 Duty to Serve public listening session. I am Toi Roberts, a member of the Duty to Serve market team, and I will be emceeing today's listening session, and the session today is being recorded.

Thank you all for joining us here today. We are excited to be hosting a series of three public listening sessions this year that will focus on specific topic areas under each of the three Duty to Serve underserved markets. Today's listening session will be focusing on the Affordable Housing Preservation market, and the topic is preserving the affordability of low-income housing tax credit properties and also the right of first refusal and qualified contracts. But, before we get started, I'd like to first introduce you to the lead of our Duty to Serve market team, the managing director of Duty to Serve markets, Ms. Marcea Barringer.

Marcea Barringer: Hi, everyone. Good afternoon. I'm Marcea Barringer, and I'm the team lead for the Duty to Serve program here at FHFA. It's my extreme pleasure today to introduce Director Sandra Thompson, who knows the Duty to Serve program very well, and who will be providing opening remarks for our session today.

Director Thompson was nominated by President Biden to serve as the Director of FHFA on December 17th, 2021. She was confirmed by the U.S. Senate on May 25th of this year and was sworn in last month on June 22nd, 2022. Director Thompson held a distinguished career in public service. As Deputy Director of Housing Mission and Goals here at FHFA, she oversaw affordable housing and mission activities, including the Duty to Serve program. At FHFA, Director Thompson has worked to ensure that the nation's housing finance system and its regulated entities operate in a safe and sound manner and that all Americans, including underserved communities of color, have equal access to safe, decent, and affordable housing, and access to credit.

Director Thompson?

Director Sandra Thompson: Good afternoon, and welcome, everyone. Thank you, Marcea, so very much for getting us started today, and thank you for that warm introduction.

Today, we will discuss the Duty to Serve affordable housing preservation market. In the days following, we will focus on the other two legs of the

Duty to Serve rule, manufactured housing and then rural housing. I must say, though, a lot of work has gone into these efforts. Last year in May, Fannie Mae and Freddie Mac submitted their proposed Duty to Serve plans. Neither of those initial plans met the Duty to Serve non-objection standard, so we asked for changes, and after nearly a year of intense effort, they came back to us with revised, more robust plans.

The amended plans go much further in accomplishing the Enterprises' important mission goals than the original plans. The targets and strategies in the 2022 to 2024 plans are more comprehensive and build upon lessons learned and progress made during the first four years of the Duty to Serve program. The new plans demonstrate a strengthened commitment to serving affordable housing preservation, manufactured housing, and rural housing markets.

Providing sustainable liquidity for the three Duty to Serve underserved markets in a safe and sound manner is an integral part of the Enterprise's responsibilities. The additional activities and objectives to be implemented under these plans are important steps toward the Enterprises fulfilling their Duty to Serve mandate over the coming years.

We must remember that this is an ongoing process. The activities outlined by the Enterprises to achieve their planned objectives are subject to FHFA review and approval as we have to ensure compliance with the Enterprises' charter acts, safety and soundness principles, and other conservatorship and regulatory requirements. Multiple forms of federal financing have played a critical role over the years in boosting affordable housing supply, but more production is needed to make up for more than a decade of under-building before the pandemic. We raised the maximum amount of multifamily loans the Enterprises can purchase by 11% to a total of $78 billion in 2022. These purchases allow for more liquidity in the multifamily market, which in turn allows more deals to be financed.

Last September, Fannie Mae and Freddie Mac also increased their equity investments in LIHTC deals, resulting in investments in over 7,000 units. LIHTC investment amounts for both Enterprises used to be 500 million each. Now it's 850 million for each Enterprise. Additionally, the Enterprises have made just over a billion dollars in housing credit investments in 2021, bringing the total to just over 4 billion since reentering this market in 2018. To ensure a strong focus on affordable housing in traditionally underserved markets, we are requiring that at least 50% or half of the Enterprises' 2022 financing for multifamily housing is targeted to mission-driven affordable housing.

Between 2022 and 2024, more than 300,000 LIHTC units will be at the end of their 15-year compliance periods. The Enterprises' LIHTC investments are critical to preserve the affordability of some of these homes. These properties are also most likely to be the subject of the right of first refusal and qualified contract issues that we are discussing today.

I want to thank you again for joining us, and I encourage you to attend the next two sessions of this listening event, where we will discuss manufactured housing and then rural housing. They are just as vital to the Duty to Serve initiatives as the housing credit issues we will talk about today.

I'll now turn things back over to Marcea. Thank you.

Toi Roberts: Thank you, Director Thompson. Before we move forward with the remainder of the agenda, I do have a few important housekeeping remarks.

As you know, we have organized this webinar in order to obtain your input on specific topic areas that fall under each of the three Duty to Serve underserved markets. During today's session, FHFA will not discuss the status or timing of any potential rulemaking. If FHFA does decide to engage in a rulemaking on any matters discussed at this meeting, this meeting would not take the place of a public comments process. The rulemaking document would establish the public comment process, and you would need to submit your comments, if any, in accordance with the submission instructions in that document. FHFA may summarize the feedback gathered at today's session in a future rulemaking document, if we decide that a summary would be useful to explain the basis of a rulemaking. Also, please keep in mind that nothing said in today's session would be construed as binding on or a final decision by the FHFA director or FHFA staff. Any questions we may have are focused on understanding your views and do not indicate a position of FHFA staff or the agency.

Okay, and with that, we have a great lineup of speakers today. We will hear from ten guest speakers -- or I think maybe nine. We just got notice that we may have lost a speaker, but, mid-way through, hearing from our speakers, we will have a short 10-minute break. Each speaker will have up to 7 minutes to speak, and we will try our best to stay on schedule, and ask that everyone speaking help us to do so as well. I will be chiming in to give each speaker a one-minute warning as their time draws to a close. If someone does go over their time, unfortunately, I will have to interrupt in order to help keep us on schedule. Each speaker will have the ability to mute and un-mute their microphones throughout the session, but we ask that you keep your microphones muted until it is your time to speak. We also ask that all speakers be prepared to turn on your video cameras during your speaking segment.

Finally, as was mentioned earlier, today's listening session will be recorded. FHFA will also prepare a transcript of today's session, which will include the names of all speakers and the organizations they represent. We will post the recording and transcript on FHFA's website and YouTube channel, along with any materials being presented today.

Now, before we begin hearing from our guest speakers, each Enterprise will speak briefly about today's listening session topic, which is preserving the affordability of low-income housing tax credit properties and also the right of first refusal in qualified contracts. First up, we will hear from Freddie Mac, and speaking for Freddie Mac's Duty to Serve team is Mr. Corey Aber.

Corey Aber: Thank you so much, and thanks, everyone, for being at the listening session today, so I'm really looking forward to hearing what everyone has to say today.

So preserving the country's affordable housing stock in both its affordability and its long-term viability is really fundamental to closing the profound affordable housing supply shortage we have. We've put a lot of focus and innovation into this challenge over the years here at Freddie Mac, investing in our target affordable housing platform and our products.

I think back to around 15 years ago, when this business was largely focused on bond credit enhancements. We've added so many different offerings since then, supporting both new properties through our forward commitment construction takeout capabilities, and also existing properties through a range of rehab loans, our tax-exempt loan that pairs really well with 4% credits, our bridge to resyndication and our cash preservation loan. Over the course of just the last few years, we've seen about a doubling of our Duty to Serve affordable housing preservation business, so leveraging these offerings to support long-term preservation.

We also reentered the LIHTC equity market with a focus on rural markets under Duty to Serve and also supporting mission-driven investments across the country. This work includes a good amount of both rehab and supporting new supply, but we're starting to come to a point, especially in the LIHTC market, where there's more potential for these properties to exit the program either through the end of the compliance period or through the end of the extended use period, as that comes to an end. This question of what happens with LIHTC properties when they exit, right, and what puts affordability at risk is a really important one. There's some nuance to this.

So this morning we published a research paper on this, so certainly feel free to take a look at that and some of the things we found there, but we've also heard a lot of attention around year 15 issues, you know, the topic of today's conversation. We're trying to help address this in our LIHTC equity business this year under Duty to Serve, and we're also really looking forward to hearing from everybody on the listening session today and what you're seeing in the market, what challenges you're facing, and what ideas you have to address them.

So thank you so much.

Toi Roberts: Thank you, Corey. Now we will hear from Fannie Mae. Speaking for the Fannie Mae Duty to Serve team is Ms. Seema Radhakrishnan.

Seema Radhakrishnan: Thank you. I have some slides, and I don't know who is going to bring those up. There we go. All right. Thank you so much.

Good afternoon, everyone. My name is Seema Radhakrishnan, and I am the market lead for Affordable Housing Preservation at Fannie Mae, and it is my pleasure today to share with you a quick overview of our key accomplishments in the AHP market as well as ways we're continuing to build upon our work in our current 2022 to 2024 plan. Next slide, please.

So before I go over the preservation market in particular, I think it's really important to emphasize that our DTS activities complement our overall mission and challenge us to increase access to mortgage credit beyond our current investments in all three of our underserved markets. From our last plan period between 2018 and 2020, we did make some pretty significant impacts across all of these markets. We provided nearly $83 billion in total liquidity across these markets, which encompasses close to 630,000 in multifamily units and 140,000 in single-family units, and within those markets we had some pretty significant impacts with the implementation of our tenant site pad lease protections on the manufactured housing side, promoting affordable housing in high opportunity areas, financing units in high-needs rural regions and loan deliveries from rural small financial institutions. Next slide, please.

So I think we all know that preservation is especially critical right now, just given how cost-burdened homeowners and renters are with respect to housing payment, utilities, and rent. And this burden is even more pronounced among the low-income population, and we know that, at Fannie Mae, we are uniquely positioned in the housing finance space and will continue to use that position to support sustainable homeownership and safe rental communities. That being said, we wanted to underscore a few focus areas for our 2022 plan year. The first two bullet points go hand-in-hand, but, on a broad level, we wanted to highlight our Residential Economic Diversity objective as being a crucial part of expanding access to affordable housing in high-opportunity areas.

Within the RED category, we specifically wanted to highlight our housing choice voucher pilot program, which we just launched in Q1 of this year. With this initiative, we're incentivizing borrowers to accept affordable housing choice vouchers in localities where vouchers are not protected under source of income legislation, and to further maximize impact, we're partnering with public housing authorities and housing advocates in target cities. So this year we'll really be spending a lot of time evaluating the alternatives and best practices, and in future years we want to analyze ways in which Fannie Mae can have a more positive impact in this area.

Finally, rural rental housing preservation. In addition to facilitating deep technical assistance to owners of aging 515 properties, we're also working hard on finding innovative ways to enable financing of these properties through our DUS lenders, so that we can meet our loan purchase goals, and this really continues to be a crucial focus area for Fannie Mae as we're acutely aware of the critical need to preserve this housing stock. Next slide, please.

So for AHP we have 124 actions, which encompasses overall objectives as well as implementation steps, and these include increased loan purchases across many of our focus areas in addition to product development and outreach efforts in single-family and multifamily. We've listed nine focus areas here, but we just highlighted a few that we wanted to underscore as particularly impactful, including increases in our LIHTC loan purchases, energy and water efficiency improvements in single-family and multifamily, and focusing on our RED objectives. Here are just a few ways in which our commitments are having meaningful impacts.

So, on the LIHTC debt purchase side, we are estimating that our increased target will translate to approximately an additional 4,000 units that are preserved each year. With respect to energy and water consumption, we've broadened our research and stakeholder outreach, and we've determined that our commitments will decrease homeowner costs with new and enhanced loan products through lender engagement and energy and water consumption by 15% on the multifamily side, and we're feeling optimistic that this will address really important issues like climate resiliency, supporting sustainability, and energy-efficient rental housing. Finally, through RED, we're really hoping to see some meaningful impacts with access to affordable housing in high-opportunity areas with the introduction of our pilot program. Next slide, please.

So I know we're here just to talk about AHP, but I wanted to very quickly touch upon manufactured housing and rural housing, and you'll be getting a more in-depth glimpse into those markets tomorrow and Wednesday, but, very quickly, for manufactured housing, we have 47 actions across seven objectives. On the single-family side, we're researching ways to leverage shared equity homeownership combined with manufactured housing as a low-cost housing option to bring deeply affordable products to the market, and this includes community land trust homeownership and other limited equity arrangements. On the multifamily side, we continue to finance manufactured housing communities owned by residents, which are typically organized under a limited equity cooperative structure and to preserve the affordability of the pads over time. Next slide, please.

So, on the rural side, we have 127 actions spread across 12 objectives, and in this phase we're going to continue to focus on multiple rural submarkets and build upon the successes of the prior plan cycle, and these submarkets include high-needs rural regions, high-needs rural populations, small financial institutions serving these rural areas, and small rural rental properties as well as LIHTC investments.

I think that concludes our presentation. Thank you so much for listening, and I'm looking forward to the discussion.

Toi Roberts: Thank you, Seema. Now, without further ado, we will now begin to hear from our guest speakers. Our first speaker is Kody Glazer from Florida Housing Coalition.

Kody Glazer: Good afternoon, everyone. It's a pleasure to be here. Thanks for giving me the opportunity to speak today, and to kick this off, I've prepared a statement so I can keep myself under the seven-minute timeline.

First off, my name is Kody Glazer. I'm the legal director of the Florida Housing Coalition, and for those of you who do not know, the Florida Housing Coalition is a statewide nonprofit that works on all things affordable housing from ending homelessness to first-time home ownership. We are contracted by the Florida Housing Finance Corporation, our State's housing compliance agency, as the State's training and technical assistance provider for a number of housing programs. So, in addition to our TA work, we also advocate strongly for permanent affordability wherever we can, recognizing that, when limited public resources are provided to build housing, permanent affordability should always be the starting point. So, in my comments today, I'm going to focus on what we are seeing in Florida and give a state perspective on the ROFR and qualified contract issue, starting with a qualified contract discussion.

So, since the mid-1990s in Florida, the Florida Housing Finance Corporation has required 50 years of affordability for tax credit projects. Importantly for our discussion today, Florida Housing has required applicants for 9% deals specifically to waive their right to a qualified contract. However, there are still a number of 9% deals that were funded before FHFC required its waiver. In a number of bond and 4%

deals, they are not required to waive their right to a qualified contract.

So, as of January 31st, 2022, the Florida Housing Finance Corporation has received over 90 eligible requests for a qualified contract, and to date 11,540 units have exited Florida Housing's affordable housing portfolio via the qualified contract process. That's nearly 12,000 subsidized units in Florida that have lost their affordability requirements through the QC process. So, in a time where Florida is a major epicenter of our nation's housing affordability crisis, that's a policy failure.

Also, according to Florida Housing, nearly 40,000 more units in more than 260 properties retain the right to request a qualified contract in the future. In other words, nearly 20% of Florida Housing's portfolio can still seek a qualified contract, so making this issue a priority for us, and that's nearly 40,000 affordable units that risk being lost due to the qualified contract.

In addition to now being a time of a massive affordability crisis in Florida, this also comes at a time when Florida's QC process almost suffered a major blow this legislative session due to a bill that would have made it easier for property owners to remove its affordability restrictions. This bill, Senate Bill 196 from this year's Florida session, originally defined a bona fide contract for qualified contract purposes to mean a complete and negotiated contract. This proposed change from requiring only an offer to requiring a fully executed and complete contract would have made it demonstrably easier for the one-year window to close before finding a purchaser, thus removing the affordability restrictions.

So, to address this bad proposed bill, I drafted an amendment to this harmful language, and Jamie Ross, our CEO, with the help of Bobby Rozen at the National Housing trust, worked directly with a for-profit developer that pushed this proposal, and we were ultimately able to pull it back and codify language that only requires an offer to purchase to satisfy the qualified contract.

This victory was hard-fought and brings me to our first recommendation, which is that FHFA, Fannie, and Freddie, could monitor legislative or administrative proposals such as the ones we saw in Florida this year that threaten long-term affordability through the QC process. So FHFA, Fannie, and Freddie could monitor harmful state proposals and potentially work with partners to lobby for their defeat in addition to incentivizing or requiring waivers of the right to seek a qualified contract to begin with. So here FHFA could work with an entity who fights the National Council of State Housing Fees to publish guidance in showing best practices for avoiding unit loss through the qualified contract process, specifically highlighting Florida's policy, which we require a waiver of the QC for 9% deals.

So, switching gears to the nonprofit right of first refusal, the other topic for today, here in Florida, we see there to be two parts of addressing this issue, which I'm sure we'll hear a lot about today. The first part is making sure there is good ROFR language in place at the beginning of a deal, and the second part is providing assistance to nonprofits with existing agreements, particularly in the years 10 to 14 of their deals, and helping those nonprofits understand and enforce their ROFRs.

To the first part of this issue, making sure that good ROFR language exists at the beginning of a partnership, there's going to be other folks on this call who will likely share some really good nationwide models for how States can and are adopting policies to protect nonprofit rights at the outset, and here's where Fannie and Freddie could even incorporate ROFR best practices in its underwriting criteria for equity and preservation financing. Additionally, requiring or facilitating permanent affordability in deals will take ROFRs to the next level.

Right now here in Florida, we are advocating for the first in the nation requirement that all 9% tax credit properties provide permanent affordability using a 99-year ground lease and giving extra points for partnering with a community land trust. So, with the requirement for permanent affordability coupled with the waiver of qualified contract rights, for-profit developers will not be able to flip you into market rates, which will get to the very root of the intent of the ROFR. So, in Florida, a permanent affordability requirement will remove the incentive for investor purchases, and Fannie and Freddie can encourage permanent affordability through its financing and education tools.

So finally, to the second part of the ROFR issue, we're helping current nonprofits understand and enforce their ROFRs. Here's where we think FHFA, Fannie, and Freddie can play a really key role. So each existing ROFR that's out there that is a specifically bargained-for agreement is a creature of contract law. However, in Florida, it's difficult to know which nonprofits are at risk of facing ROFR disputes, since there's no central information database for what each agreement says in which ROFRs are at heightened risk of being challenged. So we think there's an opportunity for FHFA, Fannie, and Freddie to support research and technical assistance to help those resource-limited nonprofits understand and enforce their ROFRs. So this could happen by, you know, obtaining partnership agreements across each State, or incentivizing or requiring specific terms of ROFRs to be reported out to a central agency.

So those are our brief comments about ROFRs and the qualified contract process in Florida. I'll be happy to answer any questions, and thanks again for the opportunity.

Toi Roberts: Thank you, Mr. Glazer. All right. Our next speaker is Andrea Ponsor from Stewards of Affordable Housing for the Future.

Andrea Ponsor: Good afternoon and thank you. On behalf of Stewards of Affordable Housing for the Future, or SAHF, we appreciate the opportunity to participate in this special listening session on preservation challenges in the housing credit program.

SAHF is a collaborative of 12 exemplary multistate nonprofits who collectively own and operate and manage 145,000 rental homes in more than 1,900 properties across the country. Loans purchased by Fannie Mae and Freddie Mac are just one important source of capital that our members use to create and preserve homes that are affordable. SAHF and its members value not only the capital source, but also the role the Enterprises can play in sparking innovation and best practices among investors in the investment market.

In our comments on the Enterprises' Duty to Serve plans, we highlighted the qualified contract loophole and challenges to rights of first refusal as two serious threats to the housing credit program and to the preservation of long-term affordability and the wellbeing of residents. I'll spend most of my time today on the right of first refusal, or ROFR, a threat to preservation and to the mission-driven nonprofits seeking to meet community needs and extend affordability.

In SAHF's number of experiences, ROFR disputes are happening when a subset of investors seek to extract profits from housing credit properties, especially those in high-cost rental markets where rising property values have created opportunities for these investors to profit far beyond original expectations or the program's intent. Within our member portfolio and in our observations of the broader industry, these challenges most often arise from limited partners who were not the original tax credit investor, but rather purchased the interest during the initial 15-year compliance period.

We've seen these challenges most frequently on properties in high-cost markets, where rents and property values have escalated over the compliance period, and there’s perceived value now in the real estate ongoing cash flow and/or in the reserves held for the benefit of the property. This is particularly harmful, because it can jeopardize housing affordability and risk further displacement of people of limited economic means in high-cost in rapidly gentrifying markets.

To date, we've seen no discernible public purpose to these challenges, only financial motivations. There are multiple firms that adopted these challenges as a business model or standard operating procedure, and the rise of litigation on these issues is creating broader ambiguity and seems to be increasing the frequency with which our nonprofit members are experiencing these disputes and having to prepare for them.

The impacts of these more pervasive challenges are broad. In general, nonprofits are spending significant time trying to structure new transactions to avoid these costly challenges in the future and carefully asset-managing existing properties to avoid challenges. In some cases, this involves sizable payments to investors, if the investor will agree to exit early to avoid the threat of a ROFR challenge. This can, in turn, trigger additional refinancing, or even a sale of the asset which wouldn't otherwise be required.

Anytime a ROFR challenge does occur, even if it's ultimately unsuccessful, it has significant negative implications for properties. Challenges to ROFR are costly, when the nonprofits or resident groups that hold the right of first refusal spend their limited resources to defend them, and those resources can't be used for preservation or development of new homes or for the provision of services to residents, or other mission-aligned activities.

The outcome, when a challenge is successful, is even more bleak.

Where the investor has refused to honor the ROFR and sees value in the sale of the asset after affordability restrictions expire, nonprofit general partners have found themselves forced to sell to a third party or in a long-term stalemate where the investor may not consent to significant needed repairs, refinancing, or re-syndication which would preserve or extend affordability. Ultimately, this leads to erosion of the quality of the housing stock and loss of units.

ROFR challenges can lead to a loss of affordable rental homes if the challenging party is successful, and then uses the qualified contract loophole to then end its affordability restrictions early, and in some cases we see challengers seek other opportunities to remove general partners and take control of the property. Importantly, this is an equity issue for residents as well. Failure to honor a ROFR can remove control of homes in community assets from the very community that developed and made it possible.

A continuation of this trend puts affordable housing stock at risk not just through loss of units. It also jeopardizes support for the program. Nonprofits are trusted partners that undertake challenging transactions, and partners should reinvest in communities that have suffered long-term (unintelligible) in these investments. If this trend continues, it will cause lasting financial harm to nonprofit housing providers and the community providers and the communities they serve by diverting resources by potentially removing homes and making partnerships more difficult to forge in the future.

We strongly support Freddie Mac's decision to help preserve nonprofit control by including language in its standard partnership agreements intended to prohibit the LP interest from being sold to a party with a history of attempting to frustrate Section 42 ROFRs, and the plan to make this language available through all syndicators.

We understand that Freddie Mac's partnership agreements alone won't put a full stop to ROFR disputes, given that the Enterprise is only one of the investors working with nonprofit developers, and that this language will only be for new transactions, but it's a welcome and needed signal to the investment market. Freddie Mac's language will also only be helpful in deals where a limited party -- partner parties and known offenders could be beneficial where certain investors are involved that have been known to take on ROFR disputes. However, where there are new actors or limited data around the acquisition of LP interests, it may not be as effective.

For this reason, we recommend that Freddie Mac and Fannie Mae adopt stronger language in their standard documents comparable to what's in the New York City HPD or Virginia Housing Development Agency, followed by allocation plans to protect rights of first refusal, and to echo Codey's recommendations, seeking opportunities there in standardized documents to prohibit the use of key qualified contracts as well is something we would love to see Fannie and Freddie take on.

Further, given the access to large reserves intended to be held for the benefit of property, as in many instances have been a driver behind our targeted disputes around investor exits or the exercise of a ROFR. We urge Freddie Mac and Fannie Mae to make standard language around reserves available --

Toi Roberts: –One minute remaining.

Andrea Ponsor: -- that clearly indicate they are to remain with the property, including in the case of a ROFR. Such language will be a helpful signal and example for the larger market.

Finally and more broadly, FHFA should work with Fannie, Freddie, and FHA to explore whether the requirements for lenders and borrowers and FHA-regulated programs be required to disclose any qualified contract or ROFR challenge activity conducted by the applicant, its key principles, or lending and investing affiliates, which would be an effective deterrent to harmful activities and could be implemented in a minimally burdensome fashion.

Thank you.

Toi Roberts: Thank you, Ms. Ponsor. Our next speaker is Ms. Aryianne Parks, and she's speaking from the Enterprise Community Partners.

Ayrianne Parks: Thank you, Toi. Thank you for the opportunity to participate in today's listening session on preserving affordability of low-income tax credit properties, especially focusing on the right of first refusal and qualified contracts.

As mentioned, my name is Aryianne Parks, and I'm the Senior Director of Public Policy at Enterprise Community Partners. Enterprise, as you may know, is a national nonprofit that exists to make good homes possible for the millions of people without one. We support community development organizations on the ground, aggregate and invest capital for impact, and advance housing policy at every level of government.

Since 1982, Enterprise has invested $54 billion and created 873,000 homes across all 50 States, and the low-income housing tax credit, or housing credit, is essential to this work. The housing credit is the nation's largest and most successful tool for encouraging private investment in the production and preservation of affordable rental housing. In fact, since its inception in 1986, the housing credit has financed the development of approximately 3.6 million apartments and provided affordable homes to about 8 million low-income families.

We appreciate the partnership of Fannie and Freddie in this crucial affordable housing program, and Enterprise is proud to count both as housing credit investors. We also appreciate the opportunity for valuable dialogue with FHFA on affordable housing and equitable housing finance, and we want to specifically acknowledge the alignment between Enterprise's mission and the vision laid forth by Director Thompson for FHFA and the GSEs.

Since reentering the market in 2018, Fannie and Freddie have both deployed capital to support high-end paths to affordable housing development across the country, including for developments that preserve affordable housing. In fact, we would recommend that FHFA expressly include Duty to Serve credit for preservation. As investors with an explicit public purpose, the GSEs should put the highest priority on preservation of housing affordability for the longest possible time period. So we appreciate that FHFA is focusing on the important preservation issues such as qualified contracts and right of first refusal.

Qualified contracts, or QCs, are resulting in the direct premature loss of some 10,000 units every year. Enterprise strongly advocates for closing the QC loophole through federal legislation, as well as through state-level policies requiring a QC waiver as a condition of receiving the housing credit allocation.

Enterprise is also concerned about the practices of some owners of housing credit limited partner interests, which has resulted in disputes and litigation over the terms of the limited partners' exit, particularly where a nonprofit holds a right of first refusal under Section 42(i)7 of the housing credit program. In our view, this litigation is contrary to Congressional intent with the ROFR provision and it threatens long-term preservation of these properties.

We recommend that FHFA and the GSEs take the following steps to advance the preservation priorities. FHFA and the GSE should require that housing credit funds in which they invest explicitly state in the fund partnership agreement that one of the business purposes of the fund is to identify and implement strategies to maintain properties as low-income housing subsequent to disposition. Such a statement of purpose directs the syndicator's sponsor of the fund to pursue preservation strategies, and it also enables the syndicator to push back on a substitute investor who may try to direct the fund to pursue profit at the expense of preservation. This statement of purpose is in Enterprise's fund agreements, including with Fannie and Freddie. Similarly, the GSEs should require that the project level partnership agreements for the housing credit properties in which they invest include in their statements a business purpose to identify and implement strategies to maintain the property as low-income housing subsequent to the sale of the property, and during the extended use periods, operating the credit units in compliance with the extended use agreement.

FHFA and the GSEs should also prohibit language found in some project-level partnership agreements which compels the general partner to submit a qualified contract request if requested by the limited partner. Such provisions are entirely unnecessary and mitigate against the preservation purpose the GSEs should be advancing. These provisions would communicate strongly to all parties, including subsequent owners and investors, the express intent to keep properties affordable long-term.

Finally, Enterprise supports the effort and Freddie Mac's Duty to Serve plan to include language in project-level partnership agreement provisions intended to protect nonprofit project sponsors from future transfer parties who may move against their ROFR rights. We have worked with Freddie Mac to finalize this language in our nonprofit sponsored transactions.

Some allocators, such as New York City, have adopted additional policies to achieve the purpose of the ROFR statute. FHFA and the GSEs should consider requiring that these provisions be included in the partnership agreements for the projects in which they invest.

I want to again thank FHFA for the opportunity to weigh in on these really important preservation issues today. Enterprise also looks forward to submitting written comments as well. Thank you.

Toi Roberts: Great. Thank you, Ms. Parks. All right. Our next speaker is Mr. Matt Reilein from National Equity Fund.

Matt Reilein: Thank you. My name is Matt Reilein, and I'm the president and CEO of the National Equity Fund, or NEF. NEF is a leading nonprofit LIHTC syndicator and investor in affordable housing. We were founded by the Local Initiative Support Corporation in 1987, which means we've got 35 years of experience. We've invested in over 3,000 properties, creating over 215,000 units in 48 States and two territories, representing over $20 billion worth of investment through the LIHTC program.

The National Equity Fund has serious concerns about both the qualified contract and right of first refusal issues and implications presented for the long-term preservation of affordable housing and continued public support for the LIHTC program. In fact, we believe they could be existential threats to the LIHTC program, if the practices are not stopped. Thanks to the FHFA and the GSEs for highlighting these issues today and through ongoing business practices.

NEF along with LISC and other nonprofits have been working at the federal and state levels in pursuit of policy changes to address both ROFR and qualified contract issues, advocating for changes in federal law and improvements in state housing finance agency practices, and while these initiatives are getting some traction, these issues need to be addressed on all fronts, so it's important for the industry and for FHFA and Fannie and Freddie to do a better job of managing deal documentation to better build in protections for long-term housing affordability. At NEF, as an example, we have modified our business operations and documentation to ensure properties we help finance are not at risk of abuse through qualified contracts or through ROFRs held by nonprofit organizations.

We're incredibly thankful for the participation of Fannie and Freddie in the LIHTC equity markets. Both companies are a positive force in affordable housing finance, and given their outsized influence in the market, their leadership to counter the abuses of ROFR and qualified contract is critical.

Of course, there's more that can be done. We believe there are steps that both entities can take to reduce these abuses in the market. We commend Freddie Mac's commitment in its Duty to Serve plan to include language in its LIHTC limited partnership agreements. It imposes limits on the potential transfer of an LP interest to a party which has a pattern of refusing to recognize ROFRs held by nonprofits. Since Freddie Mac is typically the sole investor in LIHTC properties it finances, it is in a position to build this kind of protection into its LPAs. As you know, Fannie Mae typically invests as a member of a multi-investor fund, so it is less well-positioned to insist on such language, but, given its outsized presence in the market, we believe it can still encourage such protections and negotiations over the designed limited partnership agreements.

Both GSEs can take additional steps to protect the ability of nonprofits to exercise their ROFRs by insisting on better language in limited partnership agreements. These ROFR rights of nonprofits are abused by a small group of entities, bad actors. They have bought up control of investor limited partnerships. They have taken advantage of the ambiguities in the ROFR statute, which may have been carried over to the partnership agreements. This problem can be addressed going forward by the use of better language in such agreements that make clear the rights of nonprofits to exercise their ROFRs.

Two great examples that others have referenced previously is the New York City credit allocator, the agency for Housing Preservation Development, or HPD. It has developed excellent language that must be included in all of its LIHTC properties to which it allocates. Similarly, the Virginia FHA has also adopted strong language to protect nonprofits. Other FHAs are moving in this direction, but state action is not necessary as syndication companies and investors agree on this language. FHFA should encourage both GSEs to require language similar to that used in New York City and Virginia to ensure that, regardless of who controls the equity fund or the property partnership, the long-term ownership of affordable housing by nonprofits is protected.

In addition to ROFR protections, we are pleased that Freddie's Duty to

Serve plan stated that they would publish a research report analyzing LIHTC properties at risk of exiting the program, including in part due to QC abuses, and would then develop a loan offering to help preserve their affordability. We commend Freddie for leveraging its lender network to incentivize borrowers to preserve affordability beyond the properties' current regulatory restrictions, and I believe that report was released this morning, so thank you.

We believe that FHFA can also preserve LIHTC properties by prohibiting the GSEs from purchasing loans from lenders that finance properties utilizing the qualified contract process. The GSEs should be discouraged from aiding the financing of any LIHTC property as being acquired for the purpose of conversion to market rate housing at the conclusion of rent affordability restrictions. Overall, we are thankful for the engagement of FHA -- FHFA, and the GSEs on this important topic.

Thank you.

Toi Roberts: Thank you, Mr. Reilein. All right. Our next speaker is Mr. Robert Rozen from the Housing Credit Attorney -- I'm sorry. He is a housing credit attorney. Sorry.

Robert Rozen: That's all right. Thank you for convening this session today to discuss two very important issues affecting affordable housing with the housing credit program. I'm a housing credit policy attorney, and I've been working on the program since its enactment in 1986.

You've heard from other speakers and you will hear from future speakers about the threats to the integrity of the program and the loss of affordable housing resources due to the abuse associated with qualified contracts and the nonprofit right of first refusal. I'm not going to go into detail on the nature of the problem with these two provisions. I've been working intensely on these issues for the last three years in an attempt to educate the housing credit community and federal policymakers about the implications of these abuses. Solutions can be found in federal legislation, changes to state FHFA policy and private sector initiatives by nonprofits and affordable housing advocates. We are working on federal legislation for both issues, and that legislation has the strong support of both current tax-writing committee chairmen, but we are not optimistic about the prospects for enactment, given the general gridlock facing Congress.

We're also working intensely with the state FHAs, many of whom have recently changed their qualified contract policies and instituted changes to increase the right of first refusal protections of nonprofits. Through our educational efforts, more and more nonprofits are insisting on tighter language in their partnership agreements to protect their Rofr or right of first refusal rights.

We are particularly pleased with the New York City tax credit allocator as mentioned by a couple of other speakers. The Agency for Housing Preservation Development has a new QAP, Qualified Allocation Plan, which requires all housing credit deals in New York City to include new language that pretty much ensures that nonprofits will be able to realize their right of first refusal regardless of the desire of a limited partner to frustrate that right; and the Virginia HFA, as has been mentioned, has adopted its own right of first refusal language that has to be in every partnership agreement. These are excellent efforts which we are attempting to have more HFAs adopt, but this has been slow going.

There's no question that Fannie Mae and Freddie Mac are a positive force in the housing credit industry. We have no question about the intent of both organizations to invest equity to ensure long-term affordability. Just focusing first on the right of first refusal issue, as you know, in the new Duty to Serve plan, Freddie Mac has pledged to insist on language for inclusion in its partnership agreements involving nonprofit sponsors to prohibit LP interests from being sold to a party that has a history of attempting to frustrate the ROFR rights of nonprofits. This is welcome, although, of course, it is Freddie that holds the LP interest, so it must remain committed to enforcing this language against itself.

It's my understanding that it is the practice of Fannie Mae, when it does proprietary deals, to insist on language that there can be no transfer of interest at the upper-tier fund level or a lower-tier property level without the approval of Fannie Mae. That seems like very good language, language that is preferable to the Freddie language because it also applies to the fund, the upper tier. Now, Fannie Mae may also invest in multi-investor funds, and it's not in as good a position, obviously, to insist on such language because other investors are involved. These policies by Freddie Mac and Fannie Mae are welcome and should be helpful in protecting the ability of the nonprofits to exercise their right of first refusal.

One of the lessons we've learned over the last few years with regard to these issues is the intention of the parties to these agreements. The understandings that the parties have when the partnership agreement is reached are no guarantee of what will happen 15 years later. The essential right of first refusal problem is poorly drafted for overly conservative-interpreted limited partnership agreements based on unclear federal law which the IRS has never clarified.

In spite of the best intentions of the current personnel at the GSEs and their government regulators, without the strongest contractual protections, there is always the possibility that the current practices can change even with the limited partnership agreement language currently insisted on by the GSEs. While I don't believe this would ever be an issue when the GSEs finance properties through nonprofit syndicators, since there is no risk that the fund will ever be sold to outside investors, it remains a risk for another syndicator to use. The best protection for nonprofits would be for the GSEs in their proprietary deals, and to the extent possible in Fannie Mae's multi-investor deals with for-profit syndicators, to use the language based on the ROFR agreement language required by HPD in New York City and Virginia Housing.

With regard to the QC issue, Freddie Mac and Fannie Mae should insist on language in their partnership agreements which require that the property be operated in compliance with the extended-use period; that is, 30 years, at least. They should also object to any language found in partnership agreements which compel the general partner to go through the qualified contract process, if requested by the limited partner. Also, I want to echo Codey Glazer's recommendation that the GSEs provide technical assistance to nonprofits as they struggle with these issues.

Thank you for the opportunity to discuss these issues today, and I welcome any questions you have in the future about this. Thank you.

Toi Roberts: Thank you, Mr. Rozen. All right, so this is our halfway point in hearing from our speakers. So now we will be taking a 10-minute break. So it's 1:53 P.M. We'll see you back after our break, at 1:03 P.M. -- I'm sorry; 2:03 P.M.

[break session]

Toi Roberts: Alright, hello! Welcome back from our break. So we are now ready for our next speaker, and our next speaker is Ms. Jennifer Schwartz from the National Council of State Housing Agencies.

Jennifer Schwartz: Hello. Good afternoon, everyone. On behalf of the National Council of State Housing Agencies, I appreciate this opportunity to offer comments to the federal housing finance agencies Fannie Mae and Freddie Mac on the preservation of affordability of low-income tax credit properties and the challenges we face due to the proliferation of qualified contract losses and abusive limited partner challenges to nonprofit general partners' efforts to exercise the right of first refusal.

I am Jennifer Schwartz, Director of Tax and Housing Advocacy at the NCSHA. NCSHA represents the housing credit allocating agencies in all 50 States, the District of Columbia, and the U.S. territories. NCSHA and our members have a long history of working closely with Fannie Mae and Freddie Mac, and in particular have been strong partners with the GSEs as they seek to meet their Duty to Serve missions of which preservation is the cornerstone.

I want to focus my remarks today on the substantial threat to the housing credit program and the low-income residents that depend on it posed by qualified contracts. Housing credit is a production subsidy to owners who agree to rent their properties to qualify to low-income residents at reduced rents for a period of a minimum of 30 years, including a 15-year tax compliance period and another period of at least 15 years subject to deed restriction. However, a loophole in the tax code essentially allows owners, at any time after year 14, to require the housing credit allocating agency to find a buyer willing to pay the so-called qualified contract price for the property. The required purchase price for a qualified contract is stipulated by a formula in Section 42.

The original intent of the qualified contract provision was to create a limited return and some liquidity for investors. At a time when housing credit was an unproven program, the investor market looked very different. Credit pricing was far lower, and the value of rental assets was much less than it is today. As it currently stands, the qualified contract formula price in nearly all cases well exceeds market value of the property as affordable housing. As a result, it is rare for the allocating agency to find a buyer willing to pay that price. Many owners seeking a qualified contract have no intention of selling their property. What they want is to convert the property to market rate so that they can take advantage of today's historically high market rents.

NCSHA first began hearing anecdotally a number of years ago that significant numbers of housing credit properties were being lost from the affordable housing inventory due to qualified contracts, and thus began the process of quantifying those losses in our annual survey of States. As of the end of calendar year 2021, over 100,000 housing credit homes had already been lost from the affordable housing inventory because of qualified contracts. Each year, the affordable housing restrictions for approximately 10,000 more homes are terminated prematurely through qualified contracts.

In 2017, NCSHA's members updated our recommended practices in housing credit administration, including by adding the recommendation that agencies require all applicants for credits to waive their right to submit a qualified contract as a condition of receiving an allocation. Though many agencies have adopted waiver requirements since the release of the 2017 recommended practices, scores of properties financed before these requirements went into place are still able to go through the qualified contract process. Sadly, in some States, politically connected developers have fought agencies' efforts to instate waiver policies, making adoption challenging.

NCSHA and other speakers here today have worked for some time on legislation to close the qualified contract loophole at the federal level, but, given obstacles to Congressional action, this remains undone. Unless and until Congress acts to close the qualified contract loophole, we expect this problem to escalate due to the considerable profits owners are able to reap if they can charge market rents in today's market. Given the challenges associated with addressing the problem at the federal level, state agencies need all the support they can get from their partners to help them mitigate qualified contract losses, and that includes Fannie Mae and Freddie Mac.

The GSEs are critical players in the housing credit industry. As such, NCSHA urges Fannie and Freddie to adopt three specific policies related to qualified contracts. First, we encourage Fannie and Freddie to set a policy of investing only in properties in which owners have waived their rights to a qualified contract. Second, we encourage Fannie and Freddie to consider preservation concerns, such as qualified contracts, as part of the criteria used to determine which loans to purchase, and limit financing of deals that could convert to market prior to the end of the extended-use commitment, so as not to facilitate the conversion of housing credit properties. Finally, we urge Fannie and Freddie to assist preservation-oriented buyers willing to make an offer to purchase a property at the qualified contract price. By taking these actions, Fannie and Freddie can signal to the housing industry at large that qualified contracts are a threat to preservation and thus the GSEs' Duty to Serve missions. Qualified contracts harm low-income families, undermine support for the housing credit program, and shortchange the taxpayer. It is not enough to build more affordable -- more housing for low-income households in need. We must also protect the investments our nation has already made in affordable housing properties and stop premature losses.

Other speakers today have spoken about the issue of nonprofit general partners' right of first refusal. While I have focused on qualified contracts, I want to also express NCSHA's grave concerns about limited partners challenging the ROFR held by nonprofits and demanding a payoff not contemplated in the partnership agreement as a condition of exiting the partnership. Such payouts undermine the long-term viability of the properties and force nonprofits to raise rent, decrease resident services, defer maintenance, or even sell the property, possibly by going through the qualified contract process to cover the payoff.

Thank you so much for the opportunity to provide comments on this important issue.

Toi Roberts: Thank you, Ms. Schwartz. Our next speaker is Moha Thakur from the National Housing Trust.

Moha Thakur: Thanks, Toi. Hi, everyone, and good afternoon. My name is Moha Thakur, and I'm the public policy manager at the National Housing Trust. On behalf of NHT, thank you for the opportunity to participate in this special Duty to Serve listening session on preservation challenges in the housing credit program.

NHT is a national nonprofit organization where, for over 30 years, we have equipped communities with sustainable, equitable futures by preserving and modernizing existing homes and building new ones that stand the test of time. We bring resident services, lending, policy advocacy, sustainability, and development under one roof, giving us the tools to make real change possible for the people we serve and engaging in all 50 States and the District of Columbia.

In previous years, NHT has had the opportunity to provide detailed comments on FHFA's Duty to Serve and the Enterprises' underserved market plan, highlighting both qualified contract loopholes and challenges to nonprofit right of first refusal, or ROFR, as serious threats to the housing credit program and long-term facilities. The following comments will focus on the nonprofit right of first refusal and threats to the long-term housing affordability and well-being of residents when threatened actions are taken.

We are encouraged by Freddie Mac's objective to better support nonprofit ownership at the end of the LIHTC compliance period. As identified in the Duty to Serve, in recent years, outside parties motivated solely by profit have acquired control of investor partnerships and housing credit properties, and have begun to systematically challenge the nonprofit general partners' exercise of the ROFR.

These limited partners have typically taken advantage of the ambiguity that exists in the federal statute in challenging the ROFR through various mechanisms. Some tactics that are used to disrupt the free exercise of the nonprofit ROFR often include taking the position that the Section 42 ROFR is the same as the common-law right of first refusal, including the calculation of the ROFR purchase price, requiring a bona fide offer from an unrelated third party, disputing the conditions in scope of transfer rights; delaying, obstructing, and disagreeing with the related valuations; refusing consent to refinance; disputing fee calculations; arguing over typographical errors; asserting alleged breaches of partnership duties; and alleging breach of fiduciary duty by the nonprofit general partner. I'm happy to provide more details on these where FHFA and the Enterprises may be interested.

These disputes, as I mentioned, are rapidly growing phenomena that are catching many affordable housing advocates, stakeholders, policymakers, and most important nonprofit developers unawares. This has had and will continue to have a profound impact on affordable housing in this country.

As far as we are aware, there have been over 45 legal challenges concerning disputes to the nonprofit ROFR, though the vast majority of these disputes are not reaching the level of litigation. Recognizing that most nonprofit general partners, like the National Housing Trust, do not have the resources to litigate these contractual issues in court, private investors are instead leveraging a profitable cash payment or requiring the sale of the property in return for leaving the partnership. This use of scarce funds for payments from general partners to private investors impact the financial viability of an affordable housing community and is detrimental not only to the mission-driven affordable owner or developer, but also impacts the low-income residents who call these communities home. As lower-income renters, these families and individuals often face housing instabilities, and housing provided through the housing credit program by mission-driven developers provides safe, stable, long-term affordable housing in addition to other supportive services.

By spending limited reserves on legal fees or to pay a private investor to directly remove them from the partnership, mission-driven developers may be left without the resources necessary to maintain low rents, provide wraparound residential supportive services or ensure that the properties are maintained as high-quality housing. Without adequate reserves, some owners may have to exit the affordable housing market altogether, bringing about further housing instability for lower-income residents.

As part of NHT's engagement with state and local allocating agencies, we have co-developed a number of policy and programmatic recommendations to help mitigate the loss of existing affordable housing communities in disputes to the nonprofit ROFR. These recommendations include actions that protect both existing and new housing credit properties, and, as such, we urge both Enterprises to adopt this additional language in their partnership agreements. For existing properties, as many other speakers have mentioned, we recommend supporting early intervention to identify properties approaching year 15, usually between years 10 and 14, and also providing technical assistance to nonprofits that are going through this process. We also recommend stricter investor eligibility; for example, if equity providers, who have actively sought to interfere with or defeat the ROFR, face regulatory sanctions impeding their ability to do new business with the Enterprises, this would cause them to reconsider and modify their practices with respect to existing properties.

Recommendations that support the free exercise of the nonprofit ROFR in future deals include language more expansive than what is currently included in Freddie Mac's Duty to Serve plan and clarify some of the ambiguity in the federal statute by including protective language that clarifies that the nonprofit ROFR cannot be conditioned upon receipt of a bona fide offer from any party, including a third party; and clarification should also be made that the ROFR outlined in Section 42 is not the same as the right of first refusal under statutory court-interpreted or common law. We also recommend clarifying the ROFR purchase price which is calculated as the minimum purchase price admissible under Section 42.

Finally, NHT recommends requiring a letter of intent of investor eligibility which includes written acknowledgment by a potential investor or syndicator at the beginning of a housing credit partnership that they have never sought to achieve early termination of a housing credit intended use agreement, either through a qualified contract, or have undermined the exercise of a nonprofit ROFR. So far, eight allocating agencies have adopted, in a QAP or other policy document, such language to ensure nonprofits can exercise their ROFR to protect long-term affordability. So far, NHT has supported New York City Housing Preservation and Development to require a letter of intent from a qualified equity provider that must include eight listed features that protect the interests of the nonprofit ROFR guarantee.

Toi Roberts: One minute remaining.

Moha Thakur: It also supported Virginia Housing to develop a specific ROFR agreement, and the remaining six allocating agencies have included various clarifying language. We encourage both Fannie Mae and Freddie Mac to recognize, first, qualified contracts and challenges to the nonprofit ROFR in their Duty to Serve plans and encourage all investor departments of both Enterprises to adopt this language that Freddie Mac has developed in addition to our recommended suggestions.

In summary, NHT would like to applaud FHFA, Fannie Mae, and Freddie Mac for their commitment to the long-term preservation of existing affordable housing and to the residents who call it home.

Thank you for your consideration of these suggestions and for the opportunity to share our perspective. I'll be happy to answer any questions.

Toi Roberts: Thank you, Ms. Thakur. All right. So our next speaker is Mr. Andrew Aurand from the National Low Income Housing Coalition.

Andrew Aurand: Thank you. So my name is Andrew Aurand, and I'm Vice President for Research at the National Low Income Housing Coalition. For those of you who may not be familiar with us, NLIHC is a national policy research and advocacy organization dedicated to achieving racially and socially equitable public policy that ensures that people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice, and our main goals are to preserve existing federally-assisted homes and housing resources, expand the supply of housing for low-income renters, and to establish housing stability as the primary purpose of federal housing policy.

I'll also note that one of the ongoing responsibilities of NLIHC's research team is to co-manage and maintain the national housing preservation database, which is an address-level inventory of federally-assisted rental housing across the U.S., and that includes properties that received low-income housing tax credits. The database is used by researchers, planners, and advocates to understand affordable housing preservation risks, so we co-manage that with the Public and Affordable Housing Research Corporation, and, in recent years, along with the Public and Affordable Housing Research Corporation, we've produced several reports that document the emerging issues in affordable housing preservation, and I'd just like to thank FHFA for inviting us to speak at this listening session on Duty to Serve and LIHTC preservation issues, and we are really pleased to see such a strong interest and concern about this topic.

I just wanted to give some context on why LIHTC preservation is so important to us. You know, although the LIHTC program is designed to serve households up to 80% of area median income, or AMI, about half -- about 47% of households in LIHTC rental units are less than 30% of the area median income, and in many cases those extremely low-income renters need additional rental assistance to afford their unit, but an important point about LIHTC is that LIHTC provides those units that otherwise likely would not exist.

The tenant data for LIHTC properties is incomplete. I wish it were better and more reliable, but we know that about 40% of LIHTC households rely on some form of additional rental assistance, and among those receiving federal rental assistance, about 42% are using a tenant-based voucher or project-based voucher, and I say all that because what that means is that there is a significant share of extremely low-income renters without a voucher who do not have additional rental assistance, and they are acutely vulnerable to housing instability, and their LIHTC-financed unit is lost from the affordable housing stock. So we are especially concerned about these renter households with the lowest incomes, who don't have assistance, since the LIHTC program does not offer tenant protection vouchers when affordability is lost.

Regarding right of first refusal, I will simply say that, you know, we agree with many of the speakers who have already mentioned their support for Freddie Mac's and for Fannie Mae's use of language in partnership agreements that unambiguously prevents transfers to bad actors who have no commitment to affordable housing, and I'll spend the next couple of minutes to address qualified contracts.

The qualified contracts, like other speakers have mentioned, is of acute concern for LIHTC preservation, and while some States have taken measures to close this loophole, others have not, and, of course, some LIHTC owners are making strategic use of this. By tracking properties over time through HUD's LIHTC property database, us and PARK have estimated that more than 110,000 units have been lost from LIHTC programs after 15 years of affordability, suggesting they were lost because of the qualified contract loophole, and surveys -- as Jennifer mentioned, surveys by NCHSA have found similar estimates. I'll add that we are increasingly hearing from our network of state and local advocates about properties at risk of being lost because of the QC process. So there is clearly a need to close the QC loophole in the federal LIHTC statutes.

However, you know, short of a change in federal law, we believe there are some steps that FHFA could take on its own to immediately curtail owner use of the QC option. FHFA should direct or could direct or at least encourage Fannie and Freddie to include riders in all of their loan agreements with LIHTC owners to stipulate owners may not exercise the qualified contract option for the duration of the loan. Properties that are currently being taken out of the LIHTC stock through the QC process should not be eligible for financing through any of Fannie Mae's or Freddie Mac's financing, and we also think FHFA could direct Freddie Mac and Fannie Mae to require owners to waive their qualified contract options as a condition of receiving equity investments.

I also want to note that, when considering investments in LIHTC properties, priority should be given to those that are at the highest risk, properties that are at the highest risk of being lost from the affordable housing stock and would be the hardest to replace, if they were lost from the affordable housing stock. So that requires further analysis of the risk factors associated with the loss of LIHTC units, whether it's through the QC process or through the expiration of extended affordability periods, and so I was happy to see Freddie Mac's report released, I think it was earlier today -- I just saw it today -- that estimates -- that examines both the risk factors for the loss of LIHTC units and the price points or the level of affordability of units that are lost from the LIHTC program. Granted, the report, you know, I think focuses mostly on non-programmatic properties -- it focuses on non-programmatic properties after they age out of their extended restrictions, so that would be – that and also those that have been lost through the QC process, and they note that many of those units lost from the LIHTC program remain affordable, around 60% of AMI -- on average, around 61% of AMI, but, if rents increase, the increase, so if rents increased the increase was modest, but I want to highlight some important points.

First, rent increases are likely to be higher after the QC process than the normal expiration of the extended affordability periods because there is a greater incentive for owners to trigger the QC process in tighter markets, and also the report released by Freddie Mac highlights that deeply affordable LIHTC units that are priced at 30% of AMI do see much larger increases than those that are 60% of AMI, which is not surprising, given that units priced for households at 30% of AMI have rents that are much lower to begin with.

So I'm saying all this because I recommend the Enterprises, in their planning of investments in LIHTC properties, look at both the risks of loss, of what properties are at the greatest risk, which properties would be the hardest to replace, and who are those properties serving, and it goes without saying, of course, that any rent increase, even if it's modest, is especially challenging for renters with extremely low incomes.

Again, thank you very much for inviting us to participate today.

Toi Roberts: All right. Thank you, Mr. Aurand. It seems we have lost another speaker, Elizabeth Elliot, today, so that's two speakers we've lost, and so I guess that concludes our hearing from guest speakers today. So now I would like to turn it back over, for closing remarks, to Marcea Barringer.

Marcea Barringer: Hi, everyone. I just wanted to, first of all, thank all of our speakers for sharing their comments and for the audience for attending today's session. We found the comments really useful, very insightful, and obviously your comments all have a lot of research behind them. I would really encourage all of the speakers today to submit their comments in writing to us. We were trying to take very careful notes. There will be a recording of this session, and a transcript will eventually be posted, but we would appreciate receiving your comments today. We will be getting out to everyone soon, to the speakers and the participants today, to those who did not speak but would also like to submit written comments, about how you can do that on our website. We will definitely take all the remarks that we heard today and any comments that we receive, written comments, into consideration as we continue to work with the Enterprises on their Duty to Serve the affordable housing preservation market, and we really look forward to continued collaboration with all of you.

So I'll turn it, at the very end, back over to Toi. Thanks again.

Toi Roberts: All right. Well, I guess that concludes our session for today, ending a little early, giving everyone a little bit of time back. So again, thank you. Thank you all for your comments, and look to see updates on our website and also for submitting written comments. Thank you.