National Association of Home Builders

Housing Finance
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Ms. Marcea Barringer
Supervisory Policy Analyst
Federal Housing Finance Agency
400 Seventh Street, S.W.
Washington, D.C. 20219

Attention: DUTY TO SERVE 2025- 2027 RFI

Dear Ms. Barringer:

The National Association of Home Builders (NAHB) appreciates this opportunity to comment on the Federal Housing Finance Agency's (FHFA) "Request for Input: Fannie Mae and Freddie Mac Proposed 2025-2027 Duty to Serve (DTS) Underserved Markets Plans (Plans)." NAHB is a Washington, D.C.-based trade association that represents more than 140,000 members who are involved in all facets of the residential construction industry. Our members' businesses include single-family home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. Many NAHB members depend on the secondary market mortgage liquidity provided by Fannie Mae and Freddie Mac to provide quality affordable housing.

BACKGROUND

The Housing and Economic Recovery Act of 2008 established a duty for Fannie Mae and Freddie Mac (the Enterprises) to serve three specified underserved markets – manufactured housing, affordable housing preservation, and rural housing. The Enterprises must fulfil this responsibility by increasing the liquidity of mortgage investments and improving the distribution of investment capital available to facilitate a secondary market for residential financing for very low- low-, and moderate-income families in those underserved markets.

FHFA's DTS regulation, which implements the statutory provisions, requires the Enterprises to prepare Plans detailing the specific activities and objectives they plan to undertake to fulfill the DTS mandate. The Enterprises establish baselines for each proposed loan purchase and investment objective based on a methodology using historical performance, among other factors, and establish targets for those loan purchase and investment objectives. This request for input (RFI) seeks public input on activities and objectives proposed by the Enterprises to be implemented under their 2025-2027 DTS Plans.

NAHB's COMMENTS ON THE UNDERSERVED MARKET PLANS

<u>General Comments</u>

In their proposed 2025-2027 Plans, Fannie Mae submitted 35 objectives, and Freddie Mac submitted 30. NAHB will not address all of these proposals. Our comments focus on the themes and objectives that are of the most immediate importance to our members at this time.

The Enterprises play a critical role in today's housing market. Together, Fannie Mae and Freddie Mac account for approximately 72 percent of the single-family mortgage market share and 40 percent of the multifamily mortgage market share. The policies, procedures and protocols adopted by the Enterprises have far-reaching impacts across housing market geographies and income levels.

Green Mortgage Products and Initiatives

Fannie Mae Affordable Housing Preservation

Activity E: Finance improvements on multifamily properties: (a) which reduce energy or water consumption by tenant or property by at least 15%; and (b) where the savings generated over the improvement's expected life will exceed its cost.

- FN_AHP_MF Energy_1: Increase positive environmental and social impact of green financing through development of market awareness and understanding of energy and water efficiency improvements and financing.

Activity F: Energy or water efficiency improvements on single-family, first-lien properties that meet FHFA criteria.

- FN_AHP_SF Energy_1: Reduce homeowner utility costs through consumer tools, new programs, and loan products.
- FN_AHP_SF Energy_2: Increase the purchase of mortgage loans that finance energy and water improvements or refinance existing energy debt.

Freddie Mac Affordable Housing Preservation

Activity 1: Financing of Energy- and/or Water-Efficiency Improvements on Single-Family Properties: Regulatory Activity

- FR_AHP_SF Energy_A: Purchase single-family loans on energy-efficiency first-lien properties.
- FR_AHP_SF Energy_B: Develop tools to inform the financing of energy- and/or water efficiency improvements on single-family homes.

NAHB believes there is room for Fannie and Freddie to develop more innovative mortgage products and services that are consistent with their Duty-to-Serve mandates. For example, the Enterprises should continue to advance specialized mortgage products to finance affordable retrofits that improve energy and/or water efficiency in existing properties. The American housing stock continues to age, and due to the recent decrease in production, there is increasing pressure to keep existing homes in service longer – homes that may not perform as well or be as efficient as newer homes. One hundred and thirty million homes out of the nation's housing stock of 137 million were built before modern building codes took effect in 2010. Equally problematic, the latest Census statistics show the number of homes built before 1970 that are taken out of commission is only about six out of every 1,000 being retired per year. These low rates of replacement mean that the built environment in the U.S. will change slowly and continue to be dominated by structures that are at least several decades old.

Older homes are less energy efficient than new homes. They were not built to the stringent requirements contained in modern codes, use (and lose) more energy, and often have less insulation and inefficient heating and air conditioning systems. According to NAHB research, even though newer homes are larger, their average site energy consumption is often lower as a result of higher energy efficiency. While a typical U.S. household consumes 77.1 million BTU per year, households occupying units built since 2010 use 67 million BTU per year. Clearly, improvements in construction practices and building codes have made significant strides in reducing energy use in new construction. However, the most cost-effective improvements have already been made, and further gains will be difficult and costly. In order to meet our national energy efficiency goals, many have recognized improvements must be made in all sectors and that retrofitting the existing building stock will be necessary. According to the National Renewable Energy Laboratory, upgrades to the existing housing stock could yield a projected reduction of 5.7% of the total annual U.S. electricity consumption in 2030. Given this potential, coupled with the array of options and opportunities that exist to do so (e.g., replace/repair doors, windows, insulation, lighting, appliances; heating and cooling equipment, install energy management systems, heat pump, solar photovoltaics; window treatments, etc.) upgrades to the existing housing stock must be a primary focus if the nation is to make measurable progress.

NAHB has been supportive of the GSEs issuance of Green Bonds which are attractive to investors and help promote industry standardization and market growth; however, NAHB requests that benefits and / or savings from the issuance of Green Bonds is clearly identifiable, transparent and passed through to the borrower with tangible benefits. Additionally, NAHB applauds the GSE's standardization through the selection and implementation of data points related to energy-efficient home features in the Uniform Appraisal Dataset (UAD). Energy efficient features have long been overlooked by appraisers and have often not received the appraised value they warranted. The implementation of energy efficient data points in the UAD will ensure all energy efficient features are effectively captured and noted as well as receive the appropriate value resulting in more accurate appraisal valuations.

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FHFA and the Enterprises must not devalue these important green programs by imposing expensive building code requirements across all of the Fannie Mae and Freddie Mac mortgage products. The Enterprises and FHFA should refrain from imposing costly building code mandates, such as the IECC 2021 and ASHRAE 90.1- 2019, as a condition of all the Fannie Mae and Freddie Mac mortgage products.

The Enterprises provide 72 percent of financing for new home purchases.[1]Therefore, any requirements established by the Enterprises largely dictate the rules for the housing finance market overall. This is true today for underwriting and appraisal standards. If FHFA were to move forward and require a specific energy code, it would become a de facto national standard. It is crucial to note that the FHFA does not have a Congressional mandate to set minimum energy standard.

The recent federal push to require certain new homes to meet the stringent energy efficiency requirements of the 2021 International Energy Conservation Code (IECC) will price many home buyers out of the market and give them no choice but to stay in older, less efficient homes. The IECC is designed to serve as a model for state and local governments, which can choose to adopt or amend the various provisions based on their localized economies, consumer needs, climates, construction methods, hazards, etc. The negative consequences of implementing a national energy code, with no consideration for local conditions, outweigh the minimal improvements to energy efficiency and is a misguided effort. At a minimum, federal policies and programs must provide sufficient flexibility and incentives so that the intended results can be met with minimal negative impacts. Modern energy codes are already incredibly energy efficient. Unnecessarily forcing the use of costly and restrictive energy codes will exacerbate the current housing affordability crisis and limit consumer choices while providing minimal benefit to the homeowner. According to Home Innovation Research Labs, compliance with the 2021 IECC can add $22,572 to the price of a new home, but in practice, home builders have estimated increased costs of up to $31,000. Furthermore, it can take as long as 90 years for homeowners to see a payback

[1] Share of Non-Conventional Financing Holds Steady in 2022, September 6, 2023. https://eyeonhousing.org/2023/09/share-of-non-conventional-financing-hold-steady-in2022/#:~:text=NAHB%20analysis%20of%20the%202022,in%202021%2C%20at%2028.8%25

from this investment. In addition to adversely impacting potential home buyers, these increased requirements and higher costs can result in decreased production and longer permitting and construction times, further exacerbating housing affordability challenges. In the end, pushing for costly and restrictive energy code requirements at the federal level will result in fewer families achieving the American dream of homeownership.

The Enterprises were created to provide liquidity, stability, and affordability to the U.S. housing market. Any mandate by FHFA that limits the availability of Fannie Mae and Freddie Mac financing for new construction to only those homes that meet the 2021 IECC or ASHRAE 90.1-2019 is counter to their charge and would severely disrupt the construction of new homes, exacerbate the housing supply shortage, and negatively impact the affordability of newly constructed homes. Such a mandate would not only increase the cost of new housing but would also create conflict between mortgage program requirements and local energy codes. Equally important, it would decrease affordable financing options for first-time and low- to moderate-income home buyers who want to purchase newly constructed homes but will be forced to purchase or stay in older, less efficient homes.

If FHFA truly desires to promote sustainability, it should exclude all green mortgages from the multifamily volume caps established in the FHFA Conservatorship Scorecard. Multifamily green mortgages were completely excluded from the volume cap until the fourth quarter of 2019. A return to the former policy will incent the Enterprises to make more of these loans.

<u>Resiliency</u>

Fannie Mae Affordable Housing Preservation
Activity J: Support disaster preparedness and weather resiliency
- FN_AHP_Resiliency_1: Support technical assistance (TA) programs that help prepare multifamily properties to adapt to weather-related risks or prepare for natural disasters.

Technical assistance is a good start. Specialized mortgage products to improve resiliency would also be welcome additions to the Enterprise's offerings.

<u>Low Income Housing Tax Credit Debt and Equity Investment</u>

Fannie Mae Rural Housing
Activity E: Invest in Low-Income Housing Tax Credit (LIHTC) properties to facilitate the provision of affordable multifamily housing in rural areas
- FN_RH_LIHTC Rural_1: Invest in LIHTC properties in rural areas

Fannie Mae Affordable Housing Preservation
Activity C: Low-Income Housing Tax Credits under Section 42 of the Internal Revenue Code of 1986, 26 U.S.C. § 42
- FN_AHP_LIHTC Debt_1: Increase liquidity to the LIHTC debt market by purchasing loans secured by LIHTC properties.

Freddie Mac Rural Housing
Activity 1: Support for All Rural Areas
- FR_RH_Rural LIHTC Equity_C: Engage in LIHTC equity investment in all rural areas.

Activity 2: Support for High-Needs Rural Regions
- FR_RH_HN Reg LIHTC_D: Engage in LIHTC equity investment.

Activity 3: Support for High-Needs Rural Populations
- FR_RH_HN LIHTC_C: Engage in LIHTC equity investment.

Freddie Mac Affordable Housing Preservation
Activity 3: Low-Income Housing Tax Credits (Debt)
- FR_AHP_LIHTC Debt_A: Provide liquidity and stability through LIHTC loan purchases.
- FR_AHP_LIHTC QC_B: Examine the impact and use of the Qualified Contracts provisions in LIHTC transactions.

The Enterprises play a critical role in the Low-Income Housing Tax Credit Program (LIHTC) by purchasing LIHTC property mortgages and making equity investments in LIHTC apartments (subject to certain restrictions). NAHB is pleased that Fannie Mae and Freddie Mac will continue providing much-needed liquidity and equity for these properties over the next three years.

Freddie Mac Affordable Housing Preservation
Activity 3: Low-Income Housing Tax Credits (Debt)
- FR_AHP_LIHTC QC_B: Examine the impact and use of the Qualified Contracts provisions in LIHTC transactions.

Freddie Mac has proposed to examine the impact and use of the Qualified Contract (QC) provision in Section 42 of the Internal Revenue Code, with the intent to leverage its market power for "appropriately limiting use of the QC provision…" NAHB opposes allowing the GSEs to leverage their market power to override federal statutory authority.

To the extent there is abuse in the system, the state housing finance agencies have tools to end it today using their allocation and oversight authority granted by Congress in Section 42 of the Internal Revenue Code. In contrast, it is improper for the GSEs to leverage their market power to overrule Congress or undermine the actions taken by state housing finance agencies, however well intended their actions may be.

The key to success of LIHTC is the public-private partnership structure. As such, the private sector takes on the risk, and the public sector provides the financial support. Since the LIHTC is a permanent section of the tax code, the private sector has assurances of stability in the program over the compliance period; stability that the funding is not subject to the uncertainties of the appropriations process as well stability that the major rules of the program are permanent.

When a developer makes a decision to put their private property in the LIHTC program, they do so based on the rules at that time. For this reason, NAHB strongly objects to significant retroactive tax changes, including retroactive changes to the QC provision. NAHB has not objected to prospective limits on QCs enacted by state housing finance agencies.

NAHB does appreciate that the Freddie Mac study would involve outreach to developers. While QCs are sometimes described as a loophole used to exit prematurely the Land Use Restrictive Agreement, the reality can be more nuanced. For example, the qualified contract process may be used to preserve a financially troubled project. Although rare—LIHTC projects have an annual foreclosure rate of less than 0.1%--over the course of 15 years or more, communities change, and the underlying demographic changes may result in a project that is unable to support its debt payments. To prevent these projects from going into foreclosure, significant debt restructuring may be required, and that might be most effectively accomplished by taking a project through the qualified contract process. By taking the project out of the program temporarily, the project can be "reset" and returned back into the LIHTC program, and these units continue to remain affordable.

NAHB is an invested partner in ensuring that the LIHTC program works as intended. And we strongly believe that a fundamental principle of the program's past and future success is the public-private partnership model, which depends on a mutual understanding of the rules of the game. The GSEs do not set those rules; Congress does. That must be respected.

Thought Leadership and Development

Freddie Mac Rural Housing
Activity 1: Support for All Rural Areas
• FR_RH_Rural Leadership_B: Facilitate thought leadership related to housing and mortgage financing in rural communities.
• FR_RH_Rural Dev Cap_D: Establish and implement a rural developer capacity building program.
• FR_RH_Rural MF ECB_E: Enhance outreach to financial institutions and borrowers that serve rural areas through a multifamily emerging correspondent program and emerging borrower initiative.

NAHB supports these ideas. We encourage Freddie Mac to reach out to NAHB, local home building associations (HBAs) and our members to participate in these initiatives.

New Suggestion for Consideration: Enterprise Equity Investment for Non-LIHTC Properties

The Enterprises' participation in the LIHTC equity investment market has provided valuable capital for affordable multifamily developments to move forward. NAHB strongly supports the Enterprises' continued involvement in LIHTC equity investments. To expand the Enterprises' affordable housing preservation capability, NAHB strongly encourages FHFA and the Enterprises to consider permitting Fannie Mae and Freddie Mac to make equity investments in a broader range of multifamily properties that provide traditional economic returns in the form of cash distributions and capital appreciation. Of course, such equity investments should be consistent with the requirements for the GSEs to operate according to safety and soundness requirements. NAHB believes this approach would be consistent with the Enterprises' DTS affordable housing preservation mandate.

The Enterprises are currently restricted to making equity investments in LIHTC properties during the 10-year credit period. It is absolutely essential to construct new affordable apartments. At the same time, policymakers should consider new approaches to create voluntary incentives and financial products that enable housing providers to continue serving low-income renters. Affordable housing providers are struggling to maintain affordability for renters as properties age, LIHTC properties stop generating credits, operating costs skyrocket and it becomes increasingly difficult to maintain the physical and financial viability of the properties without substantial rent increases.

The State of the Nation's Housing 2023, published by the Harvard Joint Center for Housing Studies, estimated that 3.9 million affordable units have been lost in the last decade, and 1.2 million of these units were lost between 2019 and 2021 alone. Aging apartment properties, including federally-assisted developments, naturally occurring affordable housing and LIHTC properties in their extended use periods (which no longer generate tax credits), are in dire need of recapitalization. Equity investment in non-tax credit producing properties could greatly help preserve affordability in housing units that would otherwise be lost. The Enterprises are already the primary provider of debt to expired LIHTC and other existing affordable rental properties, so the needs of these properties should be familiar to Fannie and Freddie.

NAHB would like to explore this concept in greater detail with FHFA, Fannie Mae and Freddie Mac.

Other Issues Under Consideration by FHFA, Fannie and Freddie

NAHB must caution FHFA, Fannie Mae and Freddie Mac to refrain from using their considerable housing market power to impose flawed, politically expedient policies on borrowers that will drive up construction costs and price out prospective homebuyers and renters.

Rent Control

Nearly 41 percent of total multifamily development costs can now be attributed to complying with regulations imposed by all levels of government.[2] To meet demand, maintain, and upgrade these communities, owners are often forced to increase rent to cover these costs. As a result, rent increases have attracted considerable media attention recently, along with calls for rent control. However, policy makers must understand that these rent increases reflect the housing shortage, substantial construction costs and investment risk, and extreme operating cost increases for housing providers.

Although rent control may sound like a quick fix to the housing affordability crisis, it is the most harmful and counterproductive regulation that multifamily housing providers face. Rent control is a deeply misguided policy that will not build a single new unit needed to address the true cause of the housing affordability crisis—which is the lack of housing supply to meet demand. Rent control jeopardizes the long-term financial solvency of the property, hamstrings the ability of apartment owners and managers to respond to sudden operating cost spikes and creates a disincentive for new apartment construction. For example, one NAHB member experienced real estate tax increases on some properties under his management by as much as 90 percent in one year. Likewise, apartment providers across the country are struggling with the cost of insurance. Apartment owners and managers have had to find ways to offset the substantial increases. A report released by the National Leased Housing Association found that for 2022-23 insurance policy renewals, 29 percent of housing providers experienced premium increases of 25 percent or more compared to 17 percent in the prior year[3].They have had to accept substantially higher insurance deductibles, cut other operating expenses, and raise rents to manage these costs.

Multifamily properties are underwritten to operate off of the rents. Rent control policies, including those that would cap the percentage of annual rent increases, effectively ignore this structure and create disincentives to new supply and insurmountable hurdles to keep pace with operating and maintenance costs. There are very few, if any, successful business models that allow the government to set the prices for a private business.

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[2] Regulation: 40.6 Percent of the Cost of Multifamily Development, April 2022. https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics-plus/special-studies/2022/special-study-regulation40-percent-of-the-cost-of-multifamily-development-june-2022.pdf
[3] Increased Insurance Costs for Affordable Housing Providers, October 2023. https://ndpanalytics.com/increasedinsurance-costs-for-affordable-housing-providers/.

Because government rent control policies are so disruptive, 87.5 percent of developers will avoid building in a jurisdiction with rent control in place.[4]

NAHB unequivocally opposes rent control in any form at any level of government. Rent control in any form is bad for housing. Research has proven repeatedly that mandatory rent control is a failed policy that does nothing to alleviate the root causes of housing affordability issues — namely the fact that our nation's housing supply has not kept pace with the needs of our growing population. Rent "stabilization" creates disincentives for multifamily housing investments across markets, particularly in low-income communities that already often have few affordable options. Moreover, rent regulation is not equitable, as it does not target lower- and moderate-income renters that are in most need of assistance, support and stability. Instead, it incentivizes current renters to remain in place for longer periods of time and disincentivizes additional investments in housing. In this way, rent control limits opportunities for those who do not have access to the rental housing market in favor of those that already do. Rent control also undermines the local tax structure because controlled rental properties cannot be fully assessed. Engaging in this type of heavy-handed government policy would create more housing scarcity and penalize a large and increasing number of would-be renters as the rental housing supply is suppressed or shrinks.

CONCLUSION

Thank you for your consideration of NAHB's comments. Please direct any questions or requests for additional information to Michelle Kitchen, Senior Director of Multifamily Finance at Mkitchen@nahb.org.

Sincerely,

Jessica R Lynch

Jessica R. Lynch

[4] Regulation: 40.6 Percent of the Cost of Multifamily Development, April 2022. https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics-plus/special-studies/2022/special-study-regulation40-percent-of-the-cost-of-multifamily-development-june-2022.pdf