



July 10, 2017

Mr. Jim Gray
Duty to Serve Program Manager
Federal Housing Finance Agency
400 7th Street SW, Room 10276
Washington, DC 20219

Mr. Jeffery R. Hayward
Executive Vice President & Head of Multifamily
Fannie Mae
3900 Wisconsin Avenue NW
Washington, DC 20016

Re: Fannie Mae's Draft Duty to Serve Underserved Markets Plan

To Whom It May Concern:

On behalf of Enterprise Community Partners, thank you for the opportunity to comment on Fannie Mae's draft Duty to Serve Underserved Market Plan (UMP) for 2018-2020.

Enterprise is a national nonprofit that helps to finance, build and advocate for affordable housing for low- and moderate-income families. Over the past 32 years, we have helped build or preserve nearly 360,000 affordable homes across all 50 states, invested more than \$23 billion into communities and touched millions of lives. Enterprise is also one of the nation's leading syndicators of Low-Income Housing Tax Credits, having invested more than \$11 billion in Housing Credit equity since the program's inception.

We are a family of companies comprised of Enterprise Community Partners (the parent nonprofit) and its related organizations: Enterprise Community Investment (a financial services company), Enterprise Community Asset Management (a multifamily asset management firm), Enterprise Community Loan Fund (a certified Community Development Financial Institution), Enterprise Homes (a housing developer) and Bellwether-Enterprise Real Estate Capital (a multifamily and commercial mortgage originator). Bellwether-Enterprise is a Fannie Mae Delegated Underwriting and Servicing (DUS) Lender and Multifamily Affordable Housing Lender, a Freddie Mac Program Plus Seller Servicer and Targeted Affordable Housing Lender, a FHA Multifamily Accelerated Processing (MAP) lender, a Ginnie Mae issuer and a U.S. Department of Agriculture Section 538 lender.

Enterprise strongly supports the final Duty to Serve rule, and we applaud both FHFA and Fannie Mae for engaging stakeholders and soliciting input throughout the rulemaking and implementation process. This letter provides comments on eight specific aspects of Fannie Mae's draft UMP:

- Purchases of loans that preserve subsidized affordable housing
- Housing Credit equity investments
- Equity investments in workforce housing
- Entity-level support to community development financial institutions (CDFIs)
- Purchases of small multifamily loans

- Loans that improve the energy efficiency of multifamily properties
- Provisions related to distressed properties and communities
- Provisions related to rural housing

Below we discuss each of these issues in more detail.

Purchases of Loans that Preserve Subsidized Affordable Housing

We commend Fannie Mae for making the preservation of existing affordable housing properties—particularly buildings subsidized with expiring Low-Income Housing Tax Credits (Housing Credits), HUD Section 8 Project-Based Rental Assistance or USDA Section 515 contracts — a priority in its draft UMP. Below are a few recommendations for strengthening each of these sections of the UMP.

- *HUD Section 8 Project-Based Rental Assistance:* In its plan for expanding purchases of loans secured by properties with Section 8 project-based rental assistance, Fannie Mae establishes a baseline by the three-year average of loan purchases between 2014–2016. While the three-year average was just shy of \$964 million in loan purchases, the figure was brought down because of weak 2015 numbers. The median purchase activity was in excess of \$1 billion (in 2014). While we recognize the value of using a baseline that incorporates market fluctuations, it is not incumbent upon Fannie Mae to seek credit for making very modest increases over the three-year average. Under the draft UMP, Fannie Mae could receive Duty to Serve credit for *decreasing* its Section 8 loan purchases from 2016 levels; the targeted five-percent increase from the baseline would total \$1.01 billion in Section 8 loan purchases in 2018, compared to the 2016 total of \$1.12 billion.

We understand that there are significant fluctuations in Fannie Mae’s multifamily loan purchase volume from year to year, but there will be no shortage of viable Section 8 preservation deals in the coming years. As such, we recommend more aggressive targets for Fannie Mae’s Section 8 loan purchases. Fannie Mae should aim to increase loan purchase activity above their 2016 level. To encourage that, activity between the baseline and 95 percent of the 3-year peak should get a Concept Score of 30. For annual activity between 95 and 110 percent of the peak, a Concept Score of 40 points should be given. Any activity above 110 percent should be given the maximum score of 50 points. In adopting this target structure, we believe there is a balance between recognizing market fluctuations and the critical need to provide more capital and liquidity to the Section 8 market.

- *USDA Section 515:* We support Fannie Mae’s proposal to work with USDA and other stakeholders to develop a plan for expanding purchases of Section 515 preservation loans, followed by specific loan purchase targets in 2019 and 2020. Many of the units in Section 515 properties with expiring affordability periods have significant capital needs but cannot access affordable, long-term loans to fund the necessary repairs, in part because the loan amounts are too small for originators to cover their costs and turn a profit. In addition, many of these properties do not have sufficient cash flow to take on conventional debt to

finance improvements or replenish reserves while also maintaining their affordability. We look forward to working with Fannie Mae and FHFA to identify a set of underwriting and pricing changes that can meet the capital needs of these properties.

- *Housing Credits*: Fannie Mae has proposed purchasing as few as 40 mortgages secured by Housing Credit properties, despite a three-year average baseline of 51 loans and 68 purchases in 2016. Even the high end of the proposed range, 70 mortgages purchased, is only 2 loans more than in 2016. No justification is provided for seeking credit for this low level of activity. Indeed, Fannie Mae’s UMP rightly recognizes its “long history of purchasing loans secured by LIHTC properties,” its own sophistication and that of its lenders, and “expects its direct impact on the market to continue to be strong.” With that history and expertise in mind, we suggest adopting a similar crediting regime as we suggest for Section 8 purchases. Specifically, we would recommend a scoring regime that would give a Concept Score of 30 for annual activity that falls between the true baseline and 95 percent of the three-year high. (In this this case, 95 percent of 2016 figures.) For annual activity between 95 and 110 percent of the peak, a Concept Score of 40 points should be given. Any activity above 110 percent should be given the maximum score of 50 points.

Furthermore, in addition to the annual loan targets, we urge Fannie Mae to set similar targets for the total number of Housing Credit units supported each year.

- *HUD’s Rental Assistance Demonstration*: Fannie Mae’s target of nine RAD transactions over the next three years is wholly inadequate. Fannie Mae notes that 80,000 units are expected to need financing, and this estimate predates the increase in the RAD cap from 185,000 to 225,000 units as part of the FY17 Continuing Resolution. Additionally, in June, Secretary Carson called for lifting the RAD cap. Moreover, while the volume of RAD deals had been partly constrained by FHA processing times, more recently, the pace of conversions has ramped up significantly.¹ The UMP states, “Fannie Mae intends to increase its share of RAD financing over the term of the Plan,” yet the plan proposes a minimum of three RAD loans in each of the three years of the plan. Given planned outreach to RAD stakeholders and lenders, analyses leading to improved processes and product offerings, and stated goal of growing its market share, we urge Fannie Mae to set higher goals for their support of RAD.

More broadly, FHFA must take steps to prevent “double counting” when awarding Duty to Serve credit for a particular preservation loan. For example, as Freddie Mac’s UMP states, a typical RAD deal includes several layers of subsidy from the federal government, including Housing Credits and Section 8 Project-Based Rental Assistance. If Fannie Mae were to purchase an eligible loan that is part of a RAD deal, it should receive Duty to Serve credit for just one of these activities, not all three. (We would allow financing for rural developments to also get credit under the separate Rural Housing UMP.)

¹ HUD Office of Recapitalization, *RADblast!*, May 2017

- *State & Local Programs:* We are pleased to see Fannie Mae’s interest in expanding support for state and local efforts to preserve affordable housing. While the plan proposes 10–15 annual loan purchases in 2019 and 2020, the UMP sets no unit targets. We recommend complementing the loan count with unit requirements. As a general rule, Fannie Mae should only receive Duty to Serve credit for the eligible portion of the property that is deemed affordable, not the entire property. As currently drafted, even if a relatively small portion of the units in a property have restricted rents — such as an “80-20” development where the vast majority of units are market-rate — Fannie Mae could theoretically receive Duty to Serve credit for the entire property. Incorporating counts of affordable units preserved into the UMP will help focus these efforts and shed light on the value of these activities.

Housing Credit Equity Investments

Enterprise strongly supports FHFA’s decision to allow approved Housing Credit investments by the GSEs in rural areas to receive Duty to Serve credit. As we mentioned in our March 2016 comment letter on the proposed rule, a diversity of investors is essential for the long-term health of the Housing Credit market, and certain segments of that market continue to suffer from relatively limited liquidity. For these reasons, it makes sense for the GSEs to maintain a limited and targeted presence in the Housing Credit market, with a focus on rural areas and other underserved segments.²

The return of the GSEs to the Housing Credit market could not come at a better time. Uncertainty over corporate tax reform — including possible changes to corporate tax rates and the Housing Credit program itself — has significantly dampened investor demand for Housing Credits in recent months.³ These disruptions in the Housing Credit market demonstrate the urgent need for a stabilizing and counter-cyclical presence. The GSEs are uniquely situated to serve that counter-cyclical role, and we urge FHFA to work with each company to develop the products, systems and rules necessary to do so in a safe and sound manner.

That said, we urge Fannie Mae to lay out a more ambitious plan for re-entering the Housing Credit market in the coming years. First, even though Duty to Serve credit will be limited to Housing Credit investments in rural areas, Fannie Mae’s investment strategy should include Housing Credit properties in non-rural areas as well. This will allow Fannie Mae to diversify its investment portfolio and serve other underserved segments of the Housing Credit market, such as affordable housing preservation deals using four-percent credits, aggregating smaller projects and properties receiving long-term Section 8 subsidies from the federal government.

² For a detailed summary of other underserved segments of the Housing Credit market, see Enterprise’s comment letter on the proposed Duty to Serve rule, available at <https://www.enterprisecommunity.org/resources/comments-federal-housing-finance-agency-fhfa-its-proposed-duty-serve-rule-13405>.

³ Laura Kusisto, “Tax Overhaul Threatens Affordable-Housing Deals,” *The Wall Street Journal* (March 2017): <https://www.wsj.com/articles/tax-overhaul-threatens-affordable-housing-deals-1490094003>.

Second, we urge Fannie Mae to expedite its timeline for re-entering the market, pending approval from FHFA. As drafted, Fannie Mae would make its first Housing Credit equity investment in 2019, which provides little to no relief to the market today. Since Fannie Mae has already begun building out the infrastructure and partnerships needed to re-enter the Housing Credit market, we recommend that Fannie Mae set a goal to make at least one equity investments in 2018, then increase the number investments in 2019 and 2020 as proposed. (We direct you to comments provided by the Center for American Progress and Consumer Federation of America for a more general discussion of expediting research and lending activities in the UMP.)

Third, we urge Fannie Mae to incorporate additional activities into its UMP that preserve the long-term affordability of Housing Credit properties that are currently in its Housing Credit portfolio, especially those that are nearing the end of their initial 15-year affordability periods and are going through the disposition process. In the past, the GSEs have argued that, under the terms of conservatorship, they are required to extract as much value as possible when disposing of Housing Credit assets. This can leave post-year-15 Housing Credit properties with depleted equity and capital reserves, which can make it difficult to preserve quality and affordability over the long term. The Duty to Serve rule is a perfect opportunity to clarify the rules of conservatorship and encourage Fannie Mae to take the necessary steps to preserve the long-term affordability of those properties with consideration for their future financial and physical viability, especially as these properties age, for there are limited public resources and not all are able to take on additional private debt.

As an immediate next step, after making the changes described above, we respectfully urge FHFA to approve Fannie Mae's plans to resume Housing Credit investments, with a focus on underserved markets, provided that such investments meet minimum standards for safety and soundness. Enterprise's President and CEO, Terri Ludwig, made a similar request in January 2017 in a letter to FHFA.

Equity Investments in Workforce Housing

Enterprise supports Fannie Mae's proposal to establish a pilot program to "provide investment capital to non-LIHTC properties that support the preservation of multifamily rental properties that are affordable to workforce families." As the UMP explains, unsubsidized affordable units make up a significant portion of the nation's rental housing stock, and in many markets these units are at increasing risk of becoming unaffordable or being lost entirely due to obsolescence. In addition, many of the low- and moderate-income residents of these units are ineligible for existing federal affordable housing programs, such as the Housing Credit or Section 8. We also believe the proposal could be expanded further to include similar equity and/or subordinated debt investments in restricted affordable housing properties, such as year 15 LIHTC communities and project-based Section 8 properties.

For the purposes of this pilot, and given the statutory and regulatory scope of the Duty to Serve rule, we recommend that Fannie Mae and FHFA define "workforce housing" as an unsubsidized

rental unit that is naturally affordable to families earning between 60-100 percent of the area median income. When awarding Duty to Serve credit for a particular investment, FHFA should provide more credit for units that are affordable at the lower end of that range (i.e. 60 percent of AMI) than units that are affordable at the higher end (i.e. 100 percent of AMI). In addition, FHFA could request that Fannie Mae provide evidence that the property is at-risk, based on local market conditions and ownership, in order to receive the greatest Duty to Serve credit for the investment. If concessionary pricing were offered, an affordability land use restriction agreement should be included to ensure long-term affordability. By incorporating a sliding scale of credit, the plan would recognize that workforce housing needs differ by market but that there are fewer available and affordable units at lower AMI levels. As a prerequisite for getting credit for supporting workforce housing, any non-LIHTC property in which Fannie Mae invests must not discriminate based on a tenant's source of income.

As an alternative to setting up an entirely new fund, Fannie Mae could meet this goal by investing directly into existing equity or mezzanine debt funds that focus on the preservation of at-risk affordable and workforce rental housing. For example, the Enterprise Multifamily Opportunity Funds provide up to 90 percent of the required non-LIHTC equity financing to acquire an existing affordable or workforce rental property, so long as it meets minimum requirements for affordability and property management. If Freddie Mac were to contribute capital to this or a similar fund, FHFA should award Duty to Serve credit for that investment.⁴

As an immediate next step, after making the changes described above, we respectfully urge FHFA to approve Fannie Mae's plans to make targeted equity investments in at-risk workforce rental housing and expand such plans to include restricted affordable housing such as year-15 LIHTC properties and project-based Section 8 communities.

Entity-level Support to Community Development Financial Institutions (CDFIs)

Enterprise supports Fannie Mae's proposal to establish a pilot program for potential entity-level investments in CDFIs and other organizations that either serve the manufactured housing market or "have a major focus for high-needs populations." However, we do not think that these entity-level investments should be limited to CDFIs that work in these two underserved segments of the market. For example, if a U.S. Treasury-certified CDFI focuses on the preservation of affordable rental housing and meets the mission test required for certification, any entity-level investment in that CDFI should also be eligible for Duty to Serve credit.

Pending approval from FHFA, Fannie Mae can support CDFIs at the entity-level in several ways by providing capital or enhance CDFIs' ability to raise and deploy capital. Examples include: direct investments, loan guarantees, and guarantees on CDFI-issued securities.

⁴ To learn more about the Enterprise Multifamily Opportunity Fund and similar equity funds targeting affordable housing preservation, see *Preserving Multifamily Workforce and Affordable Housing*, available at: <http://uli.org/wp-content/uploads/ULI-Documents/Preserving-Multifamily-Workforce-and-Affordable-Housing.pdf>.

- Duty to Serve credit could be received by making direct investments in CDFIs, similar to the way in which financial institutions and other private investors have done for decades. Specifically, we encourage Fannie Mae to consider Equity Equivalent (EQ2) investments. EQ2s are uniquely designed to meet the capitalization needs of CDFIs because these products are: (1) is carried as an investment on the investor’s balance sheet; (2) is a general obligation of the CDFI that is not secured by any of the CDFI’s assets; (3) is fully subordinated to the right of repayment of all of the CDFI’s other creditors; (4) does not give the investor the right to accelerate payment unless the CDFI ceases its normal operations; (5) carries an interest rate that is not tied to any income received by the CDFI; and (6) often has a rolling term or indeterminate maturity. In addition to its flexible terms and often below-market interest rates, EQ2 capital increases the CDFI’s debt capacity by protecting senior lenders from losses.
- Fannie Mae could also receive Duty to Serve credit for providing CDFIs with loan guarantees, especially if those guarantees allow CDFIs to access long-term capital. Loan guarantees encourage CDFIs to undertake large-scale investment and extend financing to the three underserved market segments identified in the final Duty to Serve rule.
- In addition to making direct investments, Fannie Mae could also provide guarantees to CDFI-issued securities to attract private individuals and institutions to make investments in CDFIs. According to analysis from ImpactUs, a web platform for community investment products, dozens of CDFIs are currently raising investment capital through fixed-income securities.⁵ One of those securities is the Enterprise Community Impact Note, an investment product that allows private investors to earn interest income while primarily financing housing and community development projects in lower-income neighborhoods.⁶ Providing a guarantee on CDFI investment products could yield the increased private investment needed to effectively build or renovate affordable housing stock.

As an immediate next step, after changes along the lines described above, we respectfully urge FHFA to approve Fannie Mae’s plans to provide entity-level support to CDFIs that serve at least one of the three underserved market segments identified in the final Duty to Serve rule. Further, Fannie Mae must engage with CDFIs as it contemplates the exact products it will offer; it is critical that these products are structured and designed to best meet the needs of underserved markets.

Purchases of Small Multifamily Loans

Enterprise supports Fannie Mae’s plan to expand its purchases of small multifamily loans originated by CDFIs and other small financial institutions. However, we also understand how

⁵ Enterprise Community Partners, *An Investment in Opportunity*, available at: <http://www.enterprisecommunity.com/resources/ResourceDetails?ID=0100943>.

⁶ For more information on the Impact Note, see: <http://www.enterprisecommunity.com/invest/enterprise-community-impact-note>.

difficult it can be for lenders to originate these loans, particularly in rural areas. The relatively small mortgages on small multifamily properties — typically below \$3 million — make it very difficult for lenders to originate profitably after accounting for personnel, legal and other transaction costs. Due to the slim margins, these loans tend to be originated by smaller local banks with limited access to the secondary market, meaning they typically must hold the loans on their balance sheets. For this reason, we urge Fannie Mae to incorporate further activities into its UMP to conduct research or develop products that incent primary lenders to provide long-term, fixed-rate and affordable loans for the preservation of the aging small multifamily properties.

In addition, to the extent that Fannie Mae expects CDFIs to originate these loans, we urge Fannie Mae to streamline to process for approving eligible lenders. For example, instead of requiring that all lenders either become or work directly with a DUS lender, Fannie Mae could require that CDFIs meet the same minimum financial capacity standards established by FHFA in 2010 as conditions for becoming members of the Federal Home Loan Bank System.⁷

Loans that Improve the Energy Efficiency of Multifamily Properties

Enterprise supports Fannie Mae’s proposal to expand the utilization of existing loan products that finance energy or water efficiency improvements to multifamily buildings, starting with research and stakeholder outreach to better understand current challenges and barriers. We encourage streamlining and aggregating of various siloed resources like weatherization, utility rebate and/or solar incentives with other public and/or private financing to create options for a modest recapitalization path. During the first year, we urge Fannie Mae to focus on potential changes to its HomeStyle Energy and Multifamily Green Financing products that reduce transaction costs and compliance and reporting burdens for smaller-scale, lower-capacity owners of multifamily properties, particularly those in rural areas. Fannie Mae should then implement specific updates to the products in year two, based on the findings from that research. By year three, Fannie Mae should also conduct additional research on how it can better incorporate long-term savings from energy and water efficiency improvements into its overall multifamily underwriting.

In furtherance of the broader need to reduce energy and water usage, Fannie Mae should develop the capacity to track energy and water use on an ongoing basis rather than simply do an analysis when purchasing a loan. This will support the objective of increasing consumer and tenant awareness as well as create an opportunity to examine their portfolio overall, with a goal of integrating energy and water efficiency into its mainstream offerings, which will also serve to enhance industry standards.

Fannie Mae should also consider how to support housing finance agencies that offer green rebate programs in working more effectively with other funding sources. As a member of the

⁷ For more about these rules, see <https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Federal-Home-Loan-Bank-Membership-for-Community-Development-Financial-Institutions.aspx>.

Green Affordable Housing Coalition, we direct you to the comments submitted by the coalition for more detailed recommendations.

Provisions Related to Distressed Properties and Communities

We believe Fannie Mae can be more aggressive in its approach to supporting distressed, non-rural communities and should align its activities in the single-family rental sector with its Duty to Serve. As a founding sponsor of the National Community Stabilization Trust, we direct you to the detailed recommendations provided by the Trust.

Provisions Related to Rural Housing

In addition to developing a loan product to support USDA-RD Section 515 properties, we would encourage Fannie Mae to continue and expand the purchase of USDA-RD Section 538 Guaranteed Rental Housing Loans. This loan program, first created in 1996, allows lenders to consider smaller loans with market competitive interest rates and extended amortizations along with the USDA guarantee which encourages the construction and preservation of smaller rural multi-family properties. Additional investors in the secondary market will encourage more activity for rural lending. This program has recently received increased guarantee authority, is budget neutral to USDA and has the backing of lenders, trade associations and borrowers. Bellwether-Enterprise is a Section 538 lender.

Outreach to not for profit entities must be part of UMP measurements in the areas of education, technical outreach and rural partnerships. Supporting organizations that are working locally, regionally and on a national basis, in the areas of credit counseling (pre- and post-purchase), credit repair, loan packaging, lender training, all are needed to reach individuals and households to increase successful home ownership. An emphasis is required on the 353 counties identified as areas of persistent poverty (defined loosely as 20% of a population living in poverty for 30 years or more). By targeting these areas with the emphasis on education, technical outreach and partnerships, asset building over a long term would be measurable.

Single family and multi-family tribal housing programs need attention under the UMP. Fannie Mae is encouraged to identify which of the 353 counties of persistent poverty have a significant tribal population (greater than 10%) which often will include remote rural tribal reservations. The outreach to this population in the forms of partnerships, education and technical support is critical.

In multi-family housing, past efforts to provide equity through dedicated equity funds (Indian Country Funds) by Fannie Mae for tribal housing created by the LIHTC program proved beneficial in jump starting equity investments by other investors so that today, tribal LIHTC allocations have more than one potential investor to consider. Our comments previously on the encouragement of both Enterprises to participate in LIHTC investments will create more investment opportunities for tribal housing developers. To implement these investments,

additional outreach and education is required for Fannie Mae to understand the cultural, trust land and sovereignty issues wrapped around tribal housing.

In single family housing, Fannie Mae needs to participate and expand activity with the HUD Section 184 guaranteed loan program. This single-family program, created exclusively for Native Americans, needs additional lenders with the ability to have an active secondary market for the guarantees. The outreach to tribal housing partners for education, technical support and partnership should include national, regional and state wide tribal coalitions that can reach multiple tribes and an expanded tribal population for credit counseling, credit repair and single family loan readiness.

Native CDFIs focusing on housing should be a target for partnerships as they are often delivering the critical education, credit counseling and loan packaging services that increase tribal home ownership. Dedicated staff at Fannie Mae that understand the uniqueness of tribal single family issues need to coordinate these efforts.

Next Steps

Again, thank you for the opportunity to comment on this important issue. Enterprise looks forward to working with FHFA, Fannie Mae and our partners across the country to develop the products and standards necessary to finalize and effectively implement the Duty to Serve Underserved Market Plan over the next three years.

If you have any questions about any of the above comments, please contact me directly at ajakabovics@enterprisecommunity.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Jakabovics", with a long horizontal flourish extending to the right.

Andrew Jakabovics
Vice President, Policy Development
Enterprise Community Partners, Inc.



July 10, 2017

Mr. Jim Gray
Duty to Serve Program Manager
Federal Housing Finance Agency
400 7th Street SW, Room 10276
Washington, DC 20219

Mr. David Leopold
V.P. of Multifamily Affordable Housing Products
Freddie Mac
8200 Jones Branch Drive
McLean, VA 22102

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Purchases of Loans that Preserve Subsidized Affordable Housing

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- *Housing Credits*: In its plan for expanding purchases of loans secured by properties financed with Housing Credit equity, Freddie Mac establishes a baseline by calculating an annual average of loan purchases between 2014-2016, then assumes a 35 percent reduction in the Housing Credit market for 2018 and beyond. As a result, Freddie Mac could receive Duty to Serve credit for significantly *decreasing* its Housing Credit property loan purchases from 2015 and 2016 levels. For example, Freddie Mac’s minimum target for 2018 (13,500 units or 90 transactions) is less than half of Freddie Mac’s 2016 volume (26,903 units or 197 transactions).¹

At the time of drafting the UMP, the LIHTC market had slowed because of uncertainty surrounding the value of the credits under a reformed tax system. Freddie Mac also noted the appropriations risk for the HOME and CDBG programs, which supply much-needed gap financing to approximately 30 percent of new LIHTC transactions. Taken together, these provided the stated rationale for discount the three-year baseline by 35 percent. We do not believe it is appropriate for the plan to include any discount to the baseline. The market for LIHTC credit may expand or contract for a range of reasons; the benefit of using a three-year average is to smooth peaks and valleys in production or otherwise account for market cycles, irrespective of the reason for the changes. In addition, while Freddie Mac points to some potential developments in tax and appropriations as reason to lower their targets, we would note that the Housing Credit equity market has stabilized considerably since earlier in 2017. In addition, we would point to the Housing Credit Improvement Act of 2017 (S. 548), a bipartisan bill co-sponsored by Senators Cantwell and Hatch, which would expand housing credit authority by 50 percent. Similarly, there is growing recognition among lawmakers that even absent expansion, the effective value of the credit should be held harmless in tax reform. Rather than adjust the targets based on possible future market trends, we would

¹ We would also like to highlight that Freddie Mac’s *2016 Annual Housing Activities Report* reports that LIHTC support was nearly \$2.2 billion (on par with 2015 levels) and financed approximately 33,700 units. Using the *AHAR* figure, the proposed 2018–2020 targets reflect a nearly 60 percent decrease over 2016. Any calibration of baseline activity should use the most current data.

suggest Freddie Mac retain more aggressive targets while leaving FHFA to “grade on a curve” in the event of major structural changes to the LIHTC market or program.

Along these lines, we would recommend a scoring regime that would give a Concept Score of 30 for annual activity that falls between the true baseline and 95 percent of the three-year high. (In this case, 95 percent of 2016 figures.) For annual activity between 95 and 110 percent of the peak, a Concept Score of 40 points should be given. Any activity above 110 percent should be given the maximum score of 50 points. In adopting this target structure, we believe there is a balance between recognizing market conditions and the critical need to provide more capital and liquidity to underserved markets.

- *HUD Section 8 Project-Based Rental Assistance:* Freddie Mac establishes a similar baseline for its purchases of loans secured by properties with Section 8 project-based rental assistance, first calculating an annual average of loan purchases between 2014–2016, then assuming a 35 percent reduction in the market for 2018 and beyond. Again, this means that Freddie Mac could receive Duty to Serve credit for significantly decreasing its Section 8 loan purchases from 2016 levels. For the reasons explained above, Freddie Mac should adopt a tiered scoring system similar to what we recommend for their LIHTC activity. We agree with the importance of developing a new loan product for more efficient origination and closing capital gaps for Section 8 transactions. Streamlining the underwriting process for small loans and otherwise identifying opportunities for simplification in the underwriting checklist may improve the financial viability of a deal.
- *USDA Section 515:* We support Freddie Mac’s proposal to develop a loan product that can “bring private capital to support Section 515 properties,” followed by annual loan purchase targets. As the UMP states, many of the units in Section 515 properties with expiring affordability periods have significant capital needs but cannot access affordable, long-term loans to fund the necessary repairs, in part because the loan amounts are too small for originators to cover their costs and turn a profit. In addition, many of these properties do not have sufficient cash flow to take on conventional debt to finance improvements or replenish reserves while also maintaining their affordability. We urge Freddie Mac to include additional activities in year one of its UMP related to research and stakeholder outreach as it develops its updated product sheet, followed by specific loan purchase targets for 2019 (not just 2020). This would be similar to the approach laid out in Fannie Mae’s UMP.
- *HUD’s Rental Assistance Demonstration:* Freddie Mac’s baseline target of seven RAD transactions over the next three years and a maximum 50 points for 13 transactions is wholly inadequate. Freddie Mac justifies this very low bar partly by noting that property portfolios will be smaller, but the target can be met by a small number of transactions even as it would take more transactions to hit the baseline unit counts. Other justifications for the low target include the assumed 35 percent reduction in LIHTC activity, which we have already discussed above. Finally, Freddie Mac points to the cap on Component 1 properties as a reason for expecting “significantly fewer RAD units converted going forward as the pace for conversions slows.” As part of the FY17 Continuing Resolution, the RAD cap was

lifted from 185,000 to 225,000 units, and the existing wait list for RAD exceeds the cap. Moreover, HUD reports only 61,000 units have completed conversion while the pace of conversions has ramped up significantly.² In June, Secretary Carson called for lifting the RAD cap. Taken together, we strongly urge Freddie Mac to do more in this space.

More broadly, FHFA must take steps to prevent “double counting” when awarding Duty to Serve credit for a particular preservation loan. For example, as Freddie Mac’s UMP states, a typical RAD deal includes several layers of subsidy from the federal government, including Housing Credits and Section 8 Project-Based Rental Assistance. If Freddie Mac were to purchase an eligible loan that is part of a RAD deal, it should receive Duty to Serve credit for just one of these activities, not all three. (We would allow financing for rural developments to also get credit under the separate Rural Housing UMP.)

- *State & Local Programs:* We urge Freddie Mac to include additional activities to expand the purchase of loans secured by affordable housing properties that are supported by state and local subsidies, such as local tax abatements or mandatory inclusionary zoning ordinances. These activities could start with research and stakeholder engagement in year one, followed by annual purchase targets in a few regions, similar to the activities laid out in Fannie Mae’s UMP, but with an added unit target rather than a loan count alone. As a general rule, Freddie Mac should only receive Duty to Serve credit for the eligible portion of the property that is deemed affordable, not the entire property. For example, if only small portion of the units in a property have restricted rents — such as an “80–20” development where the vast majority of units are market-rate — Freddie Mac should not receive Duty to Serve credit for the entire property. Incorporating counts of affordable units preserved into the UMP will help focus these efforts and shed light on the value of these activities.

Housing Credit Equity Investments

Enterprise strongly supports FHFA’s decision to allow approved Housing Credit investments by the GSEs in rural areas to receive Duty to Serve credit. As we mentioned in our March 2016 comment letter on the proposed rule, a diversity of investors is essential for the long-term health of the Housing Credit market, and certain segments of that market continue to suffer from relatively limited liquidity. For these reasons, it makes sense for the GSEs to maintain a limited and targeted presence in the Housing Credit market, with a focus on rural areas and other underserved segments.³

The return of the GSEs to the Housing Credit market could not come at a better time. While, as mentioned above, the Housing Credit equity market has stabilized to some degree following

² HUD Office of Recapitalization, *RADblast!*, May 2017.

³ For a detailed summary of other underserved segments of the Housing Credit market, see Enterprise’s comment letter on the proposed Duty to Serve rule, available at <https://www.enterprisecommunity.org/resources/comments-federal-housing-finance-agency-fhfa-its-proposed-duty-serve-rule-13405>.

initial uncertainty over corporate tax reform — including possible changes to corporate tax rates and the Housing Credit program itself — it has nonetheless stabilized at a price point that is 10-15% lower than prevailing prices prior to the election.⁴ These disruptions in the Housing Credit market demonstrate the urgent need for a stabilizing and counter-cyclical presence. The GSEs are uniquely situated to serve that counter-cyclical role, and we urge FHFA to work with each company to develop the products, systems and rules necessary to do so in a safe and sound manner.

That said, we urge Freddie Mac to lay out a more ambitious plan for re-entering the Housing Credit market in the coming years. First, even though Duty to Serve credit will be limited to Housing Credit investments in rural areas, Freddie Mac's investment strategy should include Housing Credit properties in non-rural areas as well. This will allow Freddie Mac to diversify its investment portfolio and serve other underserved segments of the Housing Credit market, such as affordable housing preservation deals using four-percent credits, aggregating smaller projects and properties receiving long-term Section 8 subsidies from the federal government.

Second, we urge Freddie Mac to expedite its timeline for re-entering the market, pending approval from FHFA. As drafted, Freddie Mac would make its first Housing Credit equity investment in 2019, which provides little to no relief to the market today. Since Freddie Mac has already begun building out the infrastructure and partnerships needed to re-enter the Housing Credit market, we recommend that Freddie Mac set a goal to make at least one equity investment in 2018, then increase the number investments in 2019 and 2020 as proposed. (We direct you to comments provided by the Center for American Progress and Consumer Federation of America for a more general discussion of expediting research and lending activities in the UMP.)

Third, we urge Freddie Mac to incorporate additional activities into its UMP that preserve the long-term affordability of Housing Credit properties that are currently in its Housing Credit portfolio, especially those that are nearing the end of their initial 15-year affordability periods and are going through the disposition process. In the past, the GSEs have argued that, under the terms of conservatorship, they are required to extract as much value as possible when disposing of Housing Credit assets. This can leave post-year-15 Housing Credit properties with depleted equity and capital reserves, which can make it difficult to preserve quality and affordability over the long term. The Duty to Serve rule is a perfect opportunity to clarify the rules of conservatorship and encourage Freddie Mac to take the necessary steps to preserve the long-term affordability of those properties with consideration for their future financial and physical viability, especially as these properties age, for there are limited public resources and not all are able to take on additional private debt.

As an immediate next step, after making the changes described above, we respectfully urge FHFA to approve Freddie Mac's plans to resume Housing Credit investments, with a focus on

⁴ Laura Kusisto, "Tax Overhaul Threatens Affordable-Housing Deals," *The Wall Street Journal* (March 2017): <https://www.wsj.com/articles/tax-overhaul-threatens-affordable-housing-deals-1490094003>.

underserved markets, provided that such investments meet minimum standards for safety and soundness. Enterprise's President and CEO, Terri Ludwig, made a similar request in January 2017 in a letter to FHFA.

Equity Investments in Workforce Housing

Fannie Mae's UMP lays out a promising proposal to "provide investment capital to non-LIHTC properties that support the preservation of multifamily rental properties that are affordable to workforce families." As Fannie Mae's UMP explains, unsubsidized affordable units make up a significant portion of the nation's rental housing stock, and in many markets these units are at increasing risk of becoming unaffordable or being lost entirely due to obsolescence. In addition, many of the low- and moderate-income residents of these units are ineligible for existing federal affordable housing programs, such as the Housing Credit or Section 8.

We urge Freddie Mac to propose a similar pilot in its UMP and expand it further to include similar equity and/or subordinated debt investments in restricted affordable housing properties, such as year 15 LIHTC communities and project-based Section 8 properties. For the purposes of this pilot, and given the statutory and regulatory scope of the Duty to Serve rule, we recommend that Freddie Mac and FHFA define "workforce housing" as an unsubsidized rental unit that is naturally affordable to families earning between 60-100 percent of the area median income. When awarding Duty to Serve credit for a particular investment, FHFA should provide more credit for units that are affordable at the lower end of that range (i.e. 60 percent of AMI) than units that are affordable at the higher end (i.e. 100 percent of AMI). In addition, FHFA could request that Freddie Mac provide evidence that the property is at-risk, based on local market conditions and ownership, in order to receive the greatest Duty to Serve credit for the investment. If concessionary pricing were offered, an affordability land use restriction agreement should be included to ensure long-term affordability. By incorporating a sliding scale of credit, the plan would recognize that workforce housing needs differ by market but that there are fewer available and affordable units at lower AMI levels. As a prerequisite for getting credit for supporting workforce housing, any non-LIHTC property in which Freddie Mac invests must not discriminate based on a tenant's source of income.

As an alternative to setting up an entirely new fund, Freddie Mac could meet this goal by investing directly into existing equity or mezzanine debt funds that focus on the preservation of at-risk affordable and workforce rental housing. For example, the Enterprise Multifamily Opportunity Funds provide up to 90 percent of the required non-LIHTC equity financing to acquire an existing affordable or workforce rental property, so long as it meets minimum requirements for affordability and property management. If Freddie Mac were to contribute capital to this or a similar fund, FHFA should award Duty to Serve credit for that investment.⁵

⁵ To learn more about the Enterprise Multifamily Opportunity Fund and similar equity funds targeting affordable housing preservation, see *Preserving Multifamily Workforce and Affordable Housing*, available at: <http://uli.org/wp-content/uploads/ULI-Documents/Preserving-Multifamily-Workforce-and-Affordable-Housing.pdf>.

As an immediate next step, we respectfully urge FHFA to approve Fannie Mae's — and hopefully Freddie Mac's — plans to make targeted non-LIHTC equity investments in at-risk workforce rental housing and expand such plans to include restricted affordable housing such as year-15 LIHTC properties and project-based Section 8 communities.

Entity-level Support to Community Development Financial Institutions (CDFIs)

Enterprise supports Freddie Mac's proposal to "develop a means to provide capital to entities that build or renovate affordable housing stock" in high-need rural areas including loan guarantees to CDFIs. Investment in CDFIs, however, should not be limited to those working in rural areas. We believe Freddie Mac should develop, and FHFA should approve, plans to create and preserve affordable housing through supporting all U.S. Treasury-certified CDFIs that both invest in affordable housing and meet the mission test required for certification.

Pending approval from FHFA, Freddie Mac can support CDFIs at the entity-level in several ways by providing capital or enhance CDFIs' ability to raise and deploy capital. Examples include: direct investments, loan guarantees, and guarantees on CDFI-issued securities.

- Duty to Serve credit could be received by making direct investments in CDFIs, similar to the way in which financial institutions and other private investors have done for decades. Specifically, we encourage Freddie Mac to consider Equity Equivalent (EQ2) investments. EQ2s are uniquely designed to meet the capitalization needs of CDFIs because these products are: (1) is carried as an investment on the investor's balance sheet; (2) is a general obligation of the CDFI that is not secured by any of the CDFI's assets; (3) is fully subordinated to the right of repayment of all of the CDFI's other creditors; (4) does not give the investor the right to accelerate payment unless the CDFI ceases its normal operations; (5) carries an interest rate that is not tied to any income received by the CDFI; and (6) often has a rolling term or indeterminate maturity. In addition to its flexible terms and often below-market interest rates, EQ2 capital increases the CDFI's debt capacity by protecting senior lenders from losses.
- Freddie Mac could also receive Duty to Serve credit for providing CDFIs with loan guarantees, especially if those guarantees allow CDFIs to access long-term capital. Loan guarantees encourage CDFIs to undertake large-scale investment and extend financing to the three underserved market segments identified in the final Duty to Serve rule.
- In addition to making direct investments, Freddie Mac could also provide guarantees to CDFI-issued securities to attract private individuals and institutions to make investments in CDFIs. According to analysis from ImpactUs, a web platform for community investment products, dozens of CDFIs are currently raising investment capital through fixed-income

securities.⁶ One of those securities is the Enterprise Community Impact Note, an investment product that allows private investors to earn interest income while primarily financing housing and community development projects in lower-income neighborhoods.⁷ Providing a guarantee on CDFI investment products could yield the increased private investment needed to effectively build or renovate affordable housing stock.

As an immediate next step, after changes along the lines described above, we respectfully urge FHFA to approve Freddie Mac's plans to provide entity-level support to CDFIs that serve at least one of the three underserved market segments identified in the final Duty to Serve rule. Further, Freddie Mac must engage with CDFIs as it contemplates the exact products it will offer; it is critical that these products are structured and designed to best meet the needs of underserved markets.

Purchases of Small Multifamily Loans

Enterprise supports FHFA's decision to develop new securitization and credit enhancement offerings for small multifamily loans originated by CDFIs and other small financial institutions. However, we also understand how difficult it can be for lenders to originate these loans, particularly in rural areas. The relatively small mortgages on small multifamily properties — typically below \$3 million — make it very difficult for lenders to originate profitably after accounting for personnel, legal and other transaction costs. Due to the slim margins, these loans tend to be originated by smaller local banks with limited access to the secondary market, meaning they typically must hold the loans on their balance sheets. For this reason, we urge Freddie Mac to incorporate further activities into its UMP to conduct research or develop products that incent primary lenders to provide long-term, fixed-rate and affordable loans for the preservation of the aging small multifamily properties.

In addition, to the extent that Freddie Mac expects CDFIs to originate these loans, we urge Freddie Mac to streamline the process for approving eligible lenders. For example, instead of requiring that all lenders either become or work directly with a Program Plus or Small Balance Loan Seller Servicer, Freddie Mac could require that CDFIs meet the same minimum financial capacity standards established by FHFA in 2010 as conditions for becoming members of the Federal Home Loan Bank System.⁸

⁶ Enterprise Community Partners, *An Investment in Opportunity*, available at: <http://www.enterprisecommunity.com/resources/ResourceDetails?ID=0100943>.

⁷ For more information on the Impact Note, see: <http://www.enterprisecommunity.com/invest/enterprise-community-impact-note>.

⁸ For more about these rules, see <https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Federal-Home-Loan-Bank-Membership-for-Community-Development-Financial-Institutions.aspx>.

Loans that Improve the Energy Efficiency of Multifamily Properties

We urge Freddie Mac to take additional steps to expand the utilization of existing loan products that finance energy and water efficiency improvements to multifamily buildings and encourage streamlining and aggregating of various siloed resources like weatherization, utility rebate and/or solar incentives with other public and/or private financing to create options for a modest recapitalization path. In addition to the annual study proposed in the UMP, in year one Freddie Mac should conduct research and stakeholder outreach to better understand current challenges and barriers to its Green Advantage product, with a primary focus on changes that can reduce transaction costs and compliance and reporting burdens for smaller-scale, lower-capacity owners of multifamily properties, particularly those in rural areas. Freddie Mac should then implement specific updates to the Green Advantage product in year two, based on the findings from that research. By year three, Freddie Mac should also conduct additional research on how it can better incorporate long-term savings from energy and water efficiency improvements into its overall multifamily underwriting.

In furtherance of the broader need to reduce energy and water usage, Freddie Mac should develop the capacity to track energy and water use on an ongoing basis rather than simply do an analysis when purchasing a loan. This will support the 2020 objective as well as create an opportunity to examine their portfolio overall, with a goal of integrating energy and water efficiency into its mainstream offerings.

Freddie Mac should also consider how to support housing finance agencies that offer green rebate programs in working more effectively with other funding sources. As a member of the Green Affordable Housing Coalition, we direct you to the comments submitted by the coalition for more detailed recommendations.

Provisions Related to Distressed Properties and Communities

We note the absence of any plans to address properties in distressed, non-rural communities in Freddie Mac's UMP with some surprise, given the partnership with the National Community Stabilization Trust (NCST) under the Neighborhood Stabilization Initiative and its mission-oriented approach to single family rental. As a founding sponsor of NCST, we direct you to the detailed recommendations provided by the Trust.

Provisions Related to Rural Housing

In addition to developing a loan product to support USDA-RD Section 515 properties, we would encourage Freddie Mac to purchase USDA-RD Section 538 Guaranteed Rental Housing Loans. This loan program, first created in 1996, allows lenders to consider smaller loans with market competitive interest rates and extended amortizations along with the USDA guarantee which encourages the construction and preservation of smaller rural multi-family properties. Additional investors in the secondary market will encourage more activity for rural lending. This program has recently received increased guarantee authority, is budget neutral to USDA

and has the backing of lenders, trade associations and borrowers. Bellwether-Enterprise is a Section 538 lender.

The USDA Section 502 Guaranteed Rental Housing program has expanded and works well with small community lenders as well as larger financial institutions. The guarantee budget authority has expanded to \$24 billion/year, an expansion justified by the need and demand for rural single family lending and an active secondary market to provide lender liquidity. Freddie Mac should be encouraged to continue to expand their participation in the purchase of guaranteed Section 502 loans and to expand their Home Possible Mortgage product line on Section 502 direct loans. Outreach to not for profit entities must be part of UMP measurements in the areas of education, technical outreach and rural partnerships. Supporting organizations that are working locally, regionally and on a national basis, in the areas of credit counseling (pre- and post-purchase), credit repair, loan packaging, lender training, all are needed to reach individuals and households to increase successful home ownership. An emphasis is required on the 353 counties identified as areas of persistent poverty (defined loosely as 20% of a population living in poverty for 30 years or more). By targeting these areas with the emphasis on education, technical outreach and partnerships, asset building over a long term would be measurable.

Single family and multi-family tribal housing programs need attention under the UMP. Freddie Mac is encouraged to identify which of the 353 counties of persistent poverty have a significant tribal population (greater than 10%) which often will include remote rural tribal reservations. The outreach to this population in the forms of partnerships, education and technical support is critical.

In multi-family housing, past efforts to provide equity through dedicated equity funds (Indian Country Funds) by Fannie Mae for tribal housing created by the LIHTC program proved beneficial in jump starting equity investments by other investors so that today, tribal LIHTC allocations have more than one potential investor to consider. Our comments previously on the encouragement of both Enterprises to participate in LIHTC investments will create more investment opportunities for tribal housing developers. To implement these investments, additional outreach and education is required for Freddie Mac to understand the cultural, trust land and sovereignty issues wrapped around tribal housing.

In single family housing, Freddie Mac needs to participate and expand activity with the HUD Section 184 guaranteed loan program. This single-family program, created exclusively for Native Americans, needs additional lenders with the ability to have an active secondary market for the guarantees. The outreach to tribal housing partners for education, technical support and partnership should include national, regional and state wide tribal coalitions that can reach multiple tribes and an expanded tribal population for credit counseling, credit repair and single family loan readiness.

Native CDFIs focusing on housing should be a target for partnerships as they are often delivering the critical education, credit counseling and loan packaging services that increase

tribal home ownership. Dedicated staff at Freddie Mac that understand the uniqueness of tribal single family issues need to coordinate these efforts.

Next Steps

Again, thank you for the opportunity to comment on this important issue. Enterprise looks forward to working with FHFA, Freddie Mac and our partners across the country to develop the products and standards necessary to finalize and effectively implement the Duty to Serve Underserved Market Plan over the next three years.

If you have any questions about any of the above comments, please contact me directly at ajakabovics@enterprisecommunity.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Jakabovics", with a long horizontal flourish extending to the right.

Andrew Jakabovics
Vice President, Policy Development
Enterprise Community Partners, Inc.