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Submitted via FHFA.gov
Ms. Marcea Barringer
Supervisory Policy Analyst
Federal Housing Finance Agency
400 Seventh Street SW, 8th Floor
Washington, D.C. 20219

RE: Duty to Serve 2022 Listening Session on Affordable Housing Preservation

Dear Ms. Barringer:

On behalf of Stewards of Affordable Housing for the Future (SAHF), thank you for the opportunity to provide comments on the Federal Housing Finance Agency's (FHFA) 2022-2024 Duty to Serve (DTS) Listening Session on Affordable Housing Preservation, hosted on July 11. We appreciate the FHFA's commitment to hear from stakeholders on the Affordable Housing Preservation market relating to the Low Income Housing Tax Credit (Housing Credit) program, and specifically about the threat that challenges to nonprofits' Right of First Refusal (ROFR) pose to preservation and the mission-driven nonprofits seeking to meet community needs and extend affordability.

SAHF is a collaborative of twelve exemplary multi-state nonprofits who collectively own, operate, and manage more than 149,000 affordable rental homes in more than 1,900 properties across the country. Loans purchased by the Fannie Mae and Freddie Mac are just one important source of capital that our members use to create and preserve affordable homes. SAHF and its members value not only the capital source, but also the role that the Enterprises can play in sparking innovation and best practices among investors and the investment market.

As we highlighted in response to the previous version of the Enterprise's 2022-2024 DTS plans, challenges to nonprofit's ROFR are one of the significant threats to the Housing Credit program, long-term affordability and mission-driven nonprofits seeking the wellbeing of residents. In our members' experiences, ROFR disputes occur when a subset of investors seek to extract profits from Housing Credit properties, especially in high-cost rental markets where rising property values create opportunities for these investors to profit far beyond expectations or the program's original intent.

Our observations both in SAHF's member portfolios and the broader industry reveal that these challenges most often arise from limited partners who were not the original tax credit investor, but rather purchased the interest during the initial fifteen-year compliance period. We have seen these challenges most frequently on properties in high-cost markets where rents and property values have escalated over the compliance period and there is perceived value in the real estate, ongoing cash flow and/or in the reserves held for the benefit of the property. This is particularly harmful since it may jeopardize housing affordability and risk further displacement of people of limited economic means in high-cost markets.

Thus far, we have seen no discernible public purpose to these challenges, only financial motivation. Multiple firms have adopted these challenges as a business model or as standard operating procedure. The rise of litigation on these issues is creating broader ambiguity that seems to be increasing the frequency with which our nonprofit members are experiencing these disputes.

The impacts of these pervasive challenges are broad:

- Generally, nonprofits are spending significant time trying to structure new transactions to avoid costly challenges to the ROFR and carefully asset managing existing properties to avoid challenges. In some cases, this involves sizable payments to investors so that they agree to exit early to avoid the threat of a ROFR challenge. This can require additional refinancing or even sale of the asset.

- Challenges to ROFR are costly and when nonprofits and resident groups must allocate limited resources to defend them, these resources cannot be used for preservation or development of new homes, for the provision of resident services, or for other mission-aligned activities.

- When the investor who has refused to honor the ROFR perceives value in the sale of the asset after affordability restrictions expire, nonprofit general partners often find themselves forced to sell to a third-party or in a long-term stalemate where the investor may not consent to significant repairs, refinancing or syndications that would preserve or extend affordability. This leads to erosion of quality in 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 end affordability restrictions early or seek other opportunities to remove the general partner and take control of the property.

- ROFR challenges also present serious equity issues as these challenges can remove control of homes and community assets from the community that developed them and made them possible.

The continuation of this trend puts affordable housing stock at risk through loss of units and jeopardizes support for the program. Nonprofits are trusted partners that undertake challenging transactions and partnerships to reinvest in communities that have suffered disinvestment and injustice. If this ROFR trend continues, it will cause lasting financial harm to nonprofit housing providers and the communities they serve by diverting resources, potentially removing homes, and making partnerships more difficult to forge.

SAHF strongly supports Freddie Mac's decision to help preserve nonprofit control by including language in its standard partnership agreements intended to prohibit the limited partner interest from being sold to a party with a history of attempting to frustrate Section 42(I)(7) ROFRs, and the plan to make this language available to all syndicators. We understand that Freddie Mac's partnership agreements alone will not put a full stop to ROFR disputes given the Enterprise is only one of the investors working with

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nonprofit developers and that this language would only be for new transactions, but it is a welcome and needed signal to the investment market.

Freddie Mac's language will also only be helpful in deals where the limited partner party is a known offender. This could be beneficial in transactions where we know certain investors have taken on ROFR disputes as a business model. However, it may not be as effective when involving new actors or limited data around the acquisition of LP interests.

It is for these reasons that we strongly urge Freddie Mac and Fannie Mae to adopt stronger language in their standard documents comparable to what is currently in the New York City Department of Housing Preservation and Development (NYCHPD) or Virginia Housing Development Agency Qualified Application Plans to protect ROFR.

Further, given that access to large reserves intended to be held for the benefit of the property have in some instances been a driver behind or the target of disputes around investor exits or exercise of a ROFR, we urge Freddie Mac and Fannie Mae to make standard language around reserves that clearly indicates that they are intended to remain with the property, including in the case of a ROFR. Such language would be a helpful signal and set an example for the larger market.

More broadly, FHFA should work with Fannie Mae and Freddie Mac to explore requirements that lenders and borrowers in FHFA regulated programs must disclose any Qualified Contract or ROFR challenge activity conducted by the applicant, its key principals, or lending/investing affiliates. This would be an effective deterrent to harmful activities and could be implemented in a minimally burdensome manner.

We appreciate the opportunity to comment on actions that FHFA, Fannie Mae and Freddie Mac can take as part of their Duty to Serve to end ROFR challenges. Please contact SAHF's Senior Vice President for Policy, Althea Arnold (aarnold@sahfnet.org) with any questions.

Sincerely,

Andrea Ponsor
President & CEO
SAHF