FannieMae

Jeffery Hayward

Executive Vice President and
Head of Multifamily Mortgage Business

3900 Wisconsin Avenue, NW
Washington, DC 20016
202 274 8660
jeffery_hayward@fanniemae.com

February 22, 2016

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
400 Seventh Street SW, 8th Floor
Washington, DC 20024
By email through www.fhfa.gov/open-for-comment-or-input

Re: Comments on RIN 2590–AA27 – Proposed Rule on Enterprise Duty to Serve Underserved Markets

Dear Mr. Pollard,

Fannie Mae welcomes the opportunity to submit this comment letter on the Federal Housing Finance Agency ("FHFA") Proposed Rule on Enterprise Duty to Serve Underserved Markets ("Proposed Rule"),[1] recently issued to implement the Enterprises' duty to serve certain underserved housing markets (the "Duty to Serve") established by the Housing and Economic Recovery Act of 2008 ("HERA").[2] This comment letter is limited to matters in the Proposed Rule related to the Enterprises' potential resumption of investment activities in the federal Low Income Housing Tax Credits ("LIHTC") program,[3] as specifically addressed in questions 41 through 45 of the Proposed Rule. We expect to submit a second comment letter addressing other aspects of the Proposed Rule in the near future.

As observed by FHFA in the Proposed Rule, the Enterprises are active in financing the debt side of LIHTC transactions.

> Under the LIHTC program, investors purchase tax credits to provide equity to off-set the development costs of rental housing properties with long-term regulatory agreements that require the housing to remain affordable for very low- or low-income households. The Enterprises offer specialized loan purchase programs to refinance and rehabilitate existing LIHTC properties in conjunction with extension of their regulatory use agreements, and are an important source of financing for preservation of older LIHTC projects.[4]

In addition, as FHFA observes, in the past the Enterprises were also active equity investors in LIHTC projects. Fannie Mae scaled back its LIHTC equity acquisitions significantly beginning in 2007 and ceased making new investments completely in 2008.

[1] Enterprise Duty to Serve Underserved Markets: Proposed Rule, 80 Fed. Reg. 79182 (Dec. 18, 2015) (to be codified at 12 C.F.R. pt. 1282).

[2] Public Law 110-289 (2008).

[3] 26 U.S.C. 42.

[4] 80 Fed. Reg. at 79198.

When Fannie Mae approached FHFA about re-entering the LIHTC market as both an investor and a guarantor of third-party investments, FHFA advised it that it would request comments on whether the Enterprises should resume equity investment and guarantor activities under the LIHTC program in conjunction with the agency's Duty to Serve rule making process. Indeed, HERA and the Proposed Rule explicitly encourage the Enterprises to engage in activities under the LIHTC program as part of carrying out their Duty to Serve, and establishes the amount of investments in projects that meet the needs of the underserved markets as one of four mandated factors that FHFA must use to evaluate whether each Enterprise has complied with its Duty to Serve.[5]

Fannie Mae's proposed participation as an investor and guarantor in the LIHTC market is an important aspect of its affirmative obligation to facilitate the financing of affordable housing for very low-, low- and moderate- income families established by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the "1992 Act").[6] Accordingly, we are submitting this separate comment letter on this subject alone to more thoroughly focus on this important matter and because FHFA's request for comments on this matter is not confined to activities that will receive Duty to Serve credit.[7]

Below is a summary of the history of the LIHTC program and Fannie Mae's previous participation as an investor and guarantor.

<u>Fannie Mae and the LIHTC Program</u>

Fannie Mae became an active participant in the market for LIHTC investments at the beginning of the LIHTC program, which was enacted as part of the Tax Reform Act of 1986 on a temporary basis, and became permanent in 1993. Under the LIHTC program, which is codified under Section 42 of the Internal Revenue Code (the "Code"), federal tax credits are allocated to state housing finance agencies, which in turn award the credits to qualifying low-income housing projects for construction or rehabilitation purposes. The tax credits are available to direct or indirect owners of the projects ratably over a 10-year period in an amount up to 70 percent of the total project development costs, excluding land, on a present value basis. The projects must comply with all requirements of the Code, including income restrictions for tenants and maximum rental rates.[8]

Fannie Mae began to acquire equity investments in LIHTC projects in the late 1980s as a passive, limited liability investor through LIHTC fund syndicators pursuant to a multi-tiered structure still common in the LIHTC industry today. Under that structure, the fund syndicator creates a limited

[5] HERA, 12 U.S.C. §§4565(a)(1)(B)(viii) and (d)(2)(D), and Proposed Rule, 80 Fed. Reg.79218.

[6] <u>Id.</u>,12 U.S.C. §4501(7).

[7] Fannie Mae anticipates that FHFA's decision with respect to matters raised in questions 41 through 45 of the Proposed Rule may be provided at any time after the end of the public comment period and separately from issuance of the final Duty to Serve rule (except for those questions explicitly addressing Duty to Serve credit).

[8] Under the Code, the LIHTC project owner elects one of the following restrictions: (i) 20 percent or more of the units are occupied by residents whose income is 50 percent or less of area median income, or (ii) 40 percent or more of the units are occupied by residents whose income is 60 percent or less of area median income. Gross rents cannot exceed 30 percent of the relevant income restriction.

partnership or limited liability company (known as a "fund") with one or more investors like Fannie Mae.[9] Fannie Mae has always been the limited partner or non-managing investor member, with an affiliate of the syndicator acting as the general partner or managing member of the fund. The fund's general partner then acquires projects, on behalf of the fund, that have been awarded tax credits for the construction or rehabilitation of affordable housing projects, and manages all the project level interests on Fannie Mae's behalf.

Given its unique role and mission to support all types of affordable rental housing throughout the country, Fannie Mae's investment strategy from the start included a focus on the most challenging projects, properties in secondary and tertiary markets, and at-risk tenant populations. In acknowledgement of the key role that such LIHTC investments played in carrying out its affordable housing mission, Fannie Mae received consistent legislative, regulatory, and supervisory support during its long period of LIHTC investment activity. Congress, the Department of Housing and Urban Development, Fannie Mae's former mission regulator, the Office of Federal Housing Enterprise Oversight, its former safety and soundness overseer, and FHFA have each recognized and endorsed Fannie Mae's LIHTC investment activities.

Beginning in the middle of 2007, Fannie Mae, like most other investors, lost its incentive to acquire new LIHTC investments due to projected declining net income and, consequently, lower anticipated tax liability. Fannie Mae began to scale back its LIHTC equity acquisitions significantly in 2007 and as noted above, ceased making new investments completely in 2008. As more fully explained in the comments below, market forces that drove the withdrawal by Fannie Mae and other investors from the LIHTC market significantly lowered demand for tax credits, resulting in lower liquidity, pricing (*i.e.*, investment dollars paid per tax credit), and ultimately the supply of affordable housing for multifamily renters.

Since the end of the recession, however, traditional investors and particularly the large banks have become profitable again with strong renewed interest in making LIHTC investments. Fund structures similar to those used historically and as described above continue to exist in today's market.

Guaranteed LIHTC Funds

Guaranteed LIHTC funds arose around the same time that the LIHTC program became permanent, in 1993, and according to industry experts, grew to represent up to 25 percent of the LIHTC market. LIHTC guaranteed funds are structured similarly to other LIHTC funds, except that a credit rated entity, which may be affiliated with or independent of the syndicator, provides credit support for the fund syndicator's promise to deliver a minimum return to the investors in the fund, in exchange for a guaranty fee. This credit support typically takes the form of a guarantee of the amount of tax

[9] Investors in LIHTC projects have typically been banks, insurance companies, the Enterprises, and other publicly-held Fortune 500 companies.

credits and other tax benefits that an investor receives from the fund, to the extent that the investor's return falls below a negotiated minimum rate of return. LIHTC guarantees cover the typical risks that plague any real estate investment, such as property, counterparty and performance risks, plus the risk that the property is not operated in accordance with the federal tax rules for maintaining affordability restrictions (but not changes to those rules). Finally, investors' claims can only be made based on the results of audited financial statements of the fund after all expected tax benefits have been distributed.

Prior to 2008, Fannie Mae acquired, and continues to own, interests in a number of guaranteed funds as an investor. Fannie Mae also served as a guarantor of LIHTC investments owned by a third party in two prior transactions that closed in 1999, and both funds performed successfully with no claims made under Fannie Mae's guaranty. Acting as a guarantor was a logical extension of Fannie Mae's authority to engage in LIHTC investment activity, given that there is no material distinction in the credit risk profile of the activities and both are consistent with Fannie Mae's affordable housing mission.

Following the financial crisis, most of the third-party guarantors previously providing this type of credit enhancement left the market, and we have been advised by industry observers that less than 10 percent of the current market is supported by guarantees today.

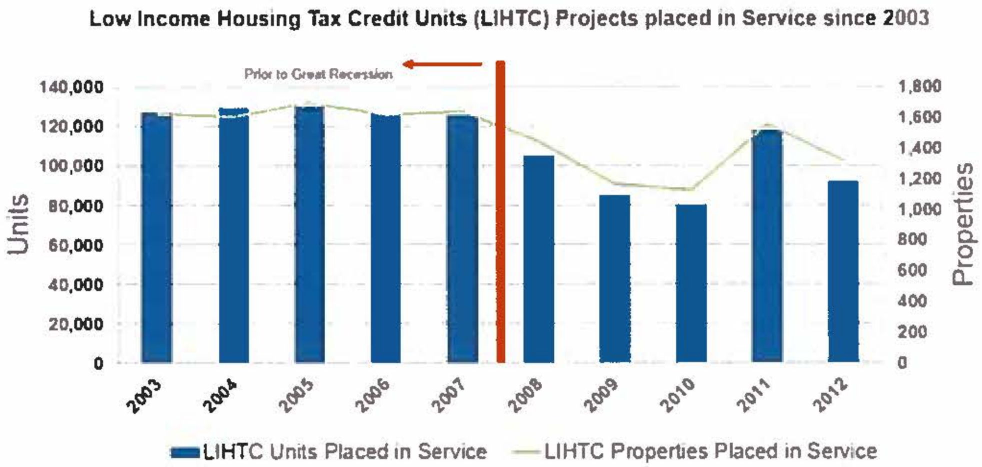
Response to FHFA Questions

41. Should FHFA allow the Enterprises to resume LIHTC equity investments? Would the resumption of LIHTC equity investments by the Enterprises benefit the financial feasibility of certain LIHTC projects or would it substitute Enterprise equity funding for private investment capital without materially benefiting the projects?

Fannie Mae respectfully submits that it should be permitted to resume making LIHTC equity investments because its presence will enhance the stability of the LIHTC program by serving as a reliable source of capital for affordable housing in diverse economic cycles and markets. Fannie Mae, as an equity investor, will not displace private funding but will instead seek to balance the distribution of equity capital across the LIHTC market to include those segments of the market that continue to suffer from limited liquidity.

After the Enterprises' and other investors' exit from the LIHTC market in 2008, there was a marked decline in the production of affordable rental units funded by tax credits, along with a wide disparity and significant volatility in the pricing of tax credits. As shown below, data taken from the HUD Low Income Tax Credit Database[10] indicates that from 2008 through 2012, the number of affordable housing units built or preserved with LIHTC declined by an average of approximately 32,000 units annually.

[10] https://www.huduser.gov/portal/datasets/lihtc.html.



In addition, since 2007, the average price for investing in tax credits has fluctuated between a low of $0.63 per tax credit to a high of $1.10 per tax credit. Pricing at the top and bottom of the pricing range over this same period has been even more dramatic, from a low of $0.50 per tax credit to a high of $1.17 per tax credit.[11] Lower pricing means that investors are paying fewer investment dollars for each tax credit, thereby decreasing the amount of total investment capital made available to a LIHTC project for the same number of tax credits being issued.

The disparity and instability noted above for both supply and pricing illustrate the high level of historic volatility, and the potential future volatility, for LIHTC investments that support affordable housing. A critical goal of Fannie Mae's planned investment model is not to replace private investment capital available for LIHTC, but to ensure that the LIHTC market remains a stable source of capital liquidity throughout market cycles. Fannie Mae will achieve this through its consistent presence in the market as an investor, particularly when other private investors retreat, thereby decreasing the volatility of the supply of affordable housing, the pricing of tax credits, and investor returns in otherwise unstable market conditions, while managing credit risk.

Most industry participants and observers agree that in recent years the market for LIHTC has largely stabilized in terms of investor demand and pricing for projects located in primary urban markets with strong investor interest from large banks seeking credit under the Community Reinvestment Act ("CRA").[12] As the banks compete to invest in these "CRA projects" to achieve regulatory mandated levels of investment, the price per credit is driven up, resulting in more equity dollars per tax credit. However, the demand for LIHTC allocated to "non-CRA projects," such as

[11] Novogradac Affordable Housing Resource Center at http://www.novoco.com/low_income_housing/facts_figures/index.php#pricing-trends.

[12] Public Law 95-128 Stat. 1147, title VIII of the Housing and Community Development Act of 1977, 12 USC §2901 *et seq*. The CRA compels banks to make investments in communities where they do business in proportion to their presence in a given market; banks favor LIHTC investments to meet this mandate due to their low risk and relatively high yield.

those in rural areas, and to projects in other challenging submarkets, like supportive housing for underserved tenant populations, remains far less stable and significantly below that of the CRA projects. Prices on non-CRA projects have been estimated to be between $0.10 and $0.24 lower,[13] on a per tax credit basis, than CRA projects. Assuming a pricing difference at the midpoint of this range, at $0.17 per tax credit, this would result in about $23,000 less in equity available per unit for the non-CRA projects,[14] or approximately $1.1 million less in equity for a 50-unit project. The disparity can be even greater for projects in rural and other challenging submarkets.

Accordingly, another critical goal of Fannie Mae's investment strategy will include a strong commitment to support all market segments, with a focus on non-CRA projects and those in challenging submarkets and supporting underserved tenant populations. Fannie Mae's participation will increase demand over the long term for tax credits allocated to those projects and thereby help to alleviate the disparity between the CRA and non-CRA markets in the amount of investment dollars being paid on a per tax credit basis. This in turn will provide more equity dollars to the projects in non-CRA and other underserved markets for the same allocation of credits.

Fannie Mae proposes to execute its investment strategy within the parameters of its robust risk management framework, as it did during its prior period of investment from the late 1980s until 2008. In that period, Fannie Mae committed $14 billion in investment capital to LIHTC projects, and received all anticipated returns in the form of tax credits and other tax benefits, with a loss rate of less than 0.15 percent. As in the past, Fannie Mae plans to manage its risks through prudent underwriting, careful selection of partners, strategic dispositions of tax credits, portfolio diversification, and diligent oversight of markets, projects and counterparties throughout the lifecycle of the investment. While non-CRA projects and those in challenging submarkets can be viewed as more risky to investors, those projects typically perform as well as conventional LIHTC projects. Accordingly, they are consistent with Fannie Mae's conservative risk management structure, which necessarily includes a balanced portfolio diversification strategy.

Fannie Mae's goal is to fill gaps in demand for capital as the private investor market presence expands and contracts over time, and to help equalize pricing and the supply of tax credit dollars currently and over time among all segments of the market, including non-CRA projects and other challenging projects that are by their nature routinely capital-constrained. In times of broader market dislocation, especially, we believe Fannie Mae is uniquely positioned to provide stable and consistent support to the LIHTC market given our experience, leadership and mission to provide liquidity in all markets at all times through our partners and stakeholders. In order to do so, Fannie Mae needs to rebuild its LIHTC capacity, infrastructure and partner relationships today in order to be able to address the needs of the market as those needs fluctuate over time.

---

[13] The Community Reinvestment Act and Its Effect on Housing Tax Credit Pricing, found at http://www.cohnreznick.com/insights/cra-study.

[14] Based on the 2012 Housing Credit Utilization Rate of $13,495 per unit published by the National Council of State Housing Agencies at https://www.ncsha.org/resource/housing-credit-utilization-charts.

42. If FHFA allows the Enterprises to resume LIHTC investments, should FHFA limit investments to support for difficult to develop projects in segments of the market with less investor demand, such as projects in markets outside of the assessment areas of large banks or in rural markets or for preservation of projects with expiring subsidies? Are there other issues that FHFA should consider if limiting the types of LIHTC projects appropriate for equity investment by the Enterprises?

As noted above, Fannie Mae's goal is to provide long term stability and limit market volatility by delivering a sustainable and scalable source of equity capital for the production and preservation of affordable housing through all economic cycles and in underserved markets, especially when and where there is insufficient private capital available to do so. This is best achieved through a flexible, proactive business strategy guided by day to day changes in the market and regulated internally within Fannie Mae's existing rigorous risk control structure and policies. We recommend that any regulatory constraints be limited to annual volume limits. This would allow Fannie Mae the flexibility to meet market needs while giving FHFA the ability to adjust these limits over time following its periodic reassessments. Additionally, we believe that the Proposed Rule creates clear targets for Fannie Mae to focus its equity investments in underserved markets without limiting the flexibility that is required to provide long term stability across market cycles.

Limiting Fannie Mae's investments solely to support for difficult to develop projects in segments of the market with less investor demand, or greater perceived risk, raises the possibility that the characteristics of a portfolio driven exclusively by regulatory requirements would present an undue risk to Fannie Mae's financial safety and soundness within its overall risk management framework by restricting portfolio diversification. Also, what constitutes difficult to develop projects and segments of the market with less investor demand is subject to change as the market changes, rendering such categorization impermanent as well as somewhat subjective. Similarly, the designation of a bank's assessment area, its need to fulfill CRA requirements, and CRA rules themselves, may change over time, altering the flow of capital to or from a given submarket just at the time that capital is needed or is no longer needed. Narrow mandates could therefore force Fannie Mae to acquire projects in a manner that does not align with its strategy to support non-CRA projects, or at worst, compel Fannie Mae to acquire projects not consistent with its efforts to maintain a balanced, diversified portfolio or to compete with banks for projects in CRA markets merely to fulfill regulatory mandates.

Regulatory constraints for investments in specifically designated deals, project types and/or markets would also preclude Fannie Mae from investing in multi-investor funds because investors in those funds typically do not have control over the selection or approval of the underlying projects, instead relying on general underwriting and investment criteria to control risk. Detailed investment mandates could have the unintended consequence of excluding Fannie Mae from partnering with valued LIHTC housing partners, many of them non-profits that tend to focus on underserved markets and projects supporting at-risk tenant populations. These non-profit syndicators often exclusively or primarily offer only multi-investor funds because that structure provides the most efficient and cost-effective means for them to attract capital and source projects.

Finally, separate and apart from the objectives expressed in the Proposed Rule, Fannie Mae will focus, as it has throughout its investment history, on tougher to serve geographies and projects with a greater level of at-risk and high need tenant populations. Fannie Mae was one of the earliest and largest investors in Native American housing, Hope VI mixed-income housing, and housing for formerly homeless tenants. In addition, Fannie Mae was the sole investor in the first LIHTC project to rebuild following the devastation left by Hurricane Katrina in 2005. The chart below illustrates the level of Fannie Mae's prior commitment to these underserved categories of LIHTC projects, and provides additional notes on our groundbreaking efforts to support these markets.

Underserved Category	**Projects**	**Units**	**Net Equity Invested**	**Note**
Native American	60	1,674	$151 million	Fannie Mae investments have supported 12 tribes in 11 states
Homeless	592	33,503	$758 million	We committed $100 million to our first homeless fund in 2004
Hope VI	166	18,859	$917 million	Fannie Mae invested in its first project in 1996
Subsidized	1,504	70,819	$2.5 billion	One of our very first commitments was a Section 8 mod rehab in 1988
Go Zone	27	2,192	$209 million	Fannie Mae closed its first fund with a commitment of $100 million within 6 months of Hurricane Katrina
Total	2,349	127,047	$4.5 billion	

Fannie Mae will assess its progress in serving rural, affordable housing preservation, and the above underserved markets by measuring itself against target levels of investment established in its annual business plan. Levels will be measured in a manner that best aligns with each plan, including such factors as the number of LIHTC units produced overall for affordable housing, the number of units produced serving tenants at less than 60% of AMI, and the number of units produced for the underserved markets described above, including rural and affordable housing preservation.

In summary, the ability of FHFA to limit activity through overall volume limits, and the ability to modify those limits following periodic review of mandated reporting by Fannie Mae, in conjunction with Fannie Mae's robust risk control framework, is more than sufficient to achieve the intended investment goals while both managing risk and allowing for prudent regulatory oversight. In addition, Fannie Mae will continue to incorporate serving high need tenant populations into its investment plans, consistent with its long history of doing so to support the creation and preservation of affordable housing that includes underserved markets and tenant populations.

43. If FHFA permits the resumption of LIHTC equity investments, should Duty to Serve credit be provided only for LIHTC equity investments in projects with expiring subsidies or projects in need of refinancing, or should Duty to Serve credit also be given for LIHTC equity investments in new construction projects with regulatory agreements that assure long-term rental affordability?

Fannie Mae believes that at a fundamental level, preservation of affordable rental housing should be broadly viewed as both the creation and conservation of safe, habitable housing affordable to low income renters. If affordability is viewed narrowly as only preservation of existing projects, then functional and practical obsolescence, plus the forces of gentrification in many geographic markets, will result in an inevitable decline in supply. As such, and in keeping with the intent of HERA, we recommend Duty to Serve credit be provided for equity investments in both existing and new construction projects that provide long-term rental affordability.

Macroeconomic trends, including robust growth in rents coupled with stagnant wage increases, have led to the decline in the availability of affordable multifamily rental units, particularly for those renters at or below 60 percent of area median income ("AMI"). Based on the most recently available data from the biannual American Housing Survey,[15] the relative proportion of multifamily rental housing that is affordable to those earning 60 percent of AMI has declined by 8.15 percent from 2009 to 2013, and by 11.45 percent to those earning 50 percent of AMI during the same period.

As FHFA observes in the Proposed Rule,[16] the population has been expanding while the supply of affordable housing has been shrinking, and the pace of construction of new affordable housing has not kept up with demand. Fannie Mae agrees with this assessment and suggests that FHFA provide Duty to Serve credit for LIHTC equity investments in both new construction and existing projects that provide long-term affordability as an important and effective means to encourage

[15] The proportion of multifamily rental housing affordable for those earning 60% of AMI declined from 62.5% in 2009 to 57.4% in 2013; and the proportion of multifamily rental housing affordable for those earning 50% of AMI declined from 42.8% in 2009 to 37.9% in 2013. From Fannie Mae 2013 American Housing Survey, available at http://www.census.gov/programs-surveys/ahs/data.html.

[16] See Proposed Rule, Supplementary Information, 80 Fed. Reg.79195.

the preservation of affordable housing for low-income renters. In addition, as noted above, equity investments in projects that meet the needs of underserved markets, as LIHTC projects do by their very definition, are a required factor in FHFA's evaluation of whether Fannie Mae has met its Duty to Serve obligation. Accordingly, permitting Fannie Mae to resume its LIHTC investment activities will be an important means for enabling Fannie Mae to carry out its Duty to Serve.

44. If FHFA allows the Enterprises to resume LIHTC investments, should FHFA limit such investments to those that promote residential economic diversity, for example, by investing in LIHTC properties located in high opportunity areas, as proposed to be defined in § 1282.1, to address concerns raised about the disproportionate siting of LIHTC housing (non-senior) in low- income areas and the effect on residential segregation?

As outlined in the response to question 42 above, limiting equity investments to specific markets or project types would significantly undermine the risk control framework needed to ensure that the portfolio has sufficient diversification to maintain an adequate balance of both market and credit risk. Limitations such as these would pose an undue risk to the financial safety and soundness of Fannie Mae's LIHTC equity portfolio.

Promoting residential economic diversity has been an area of focus for Fannie Mae throughout its history as a tax credit investor. Fannie Mae regularly invested in properties with multiple income level tiers, deeply skewed income levels, housing targeted for Native American communities, and Hope VI developments, as described above. This type of strategic targeting will carry forward in the proposed plan.

In terms of our ability to achieve the intended impact to the LIHTC market, we need to take into account the lack of certainty of the timing, as well as the speed at which markets and availability of capital can shift. As such, Fannie Mae's investment goals are best achieved through a flexible and proactive business strategy guided by changes in the market and regulated internally by Fannie Mae with regular reporting to FHFA.

In order to support the long term stability of the LIHTC market while prudently and cost-effectively managing credit and portfolio risk, we recommend no specific limitations on the ability to deploy capital in response to the needs of the market, other than volume limits if deemed necessary.

45. Should FHFA consider permitting the Enterprises to act as the guarantor of equity investments in projects by third-party investors provided any such guarantee is safe and sound and consistent with the Enterprise's Charter Act? If so, what types of guarantees should the Enterprises offer?

Fannie Mae respectfully requests permission to act as a guarantor of equity investments in projects by third-party investors, as it has previously done, because doing so would materially support the availability and preservation of affordable housing in underserved markets through both new construction and the rehabilitation of existing units in those markets.

Fannie Mae's re-entry into the market as a LIHTC guarantor would provide a source of stability for credit enhancement that is currently very limited but much needed in the affordable housing market. Prior to the financial crisis of 2007-2008, there were a number of LIHTC fund guarantors that supported up to 25 percent, and sometimes more, of new investments, though the market was inconsistent as the demand for and availability of guarantees fluctuated from year to year. Prior to the financial crisis, most guarantors did not maintain a consistent presence in the market, entering and retreating opportunistically in response to variable economic factors. Since the financial crisis, most of the third-party guarantors have completely exited the market, resulting in less than 10 percent of the equity market being currently supported by guarantees. The handful of guarantors remaining in the market primarily guarantee the return on investments originated by themselves or their affiliates, and so are not necessarily expanding the type or number of LIHTC investors in the primary or underserved markets. Fannie Mae would serve as a stable and consistent presence in the market as a guarantor of tax credit investments.

In addition, we have been advised by many industry participants that there is an ongoing need for guaranteed funds in order to expand and diversify the LIHTC investor base. Potential new participants may not invest in LIHTC due to the complicated rules governing these investments, the perceived risks of noncompliance, their lack of internal expertise, and the relatively long timeframe required to realize the full return of a LIHTC investment. A guaranty from Fannie Mae, a highly rated counterparty with deep and longtime expertise as an investor, guarantor and lender under the LIHTC program, would serve to alleviate many of these barriers and attract investors that may not otherwise invest in affordable rental housing at all.

Fannie Mae, as a highly rated and knowledgeable guarantor, would also attract more capital to underserved markets and property segments. Investors in guaranteed LIHTC funds have historically been willing to pay more dollars per tax credit in return for the promise of a minimum guaranteed return. Accordingly, projects located in secondary and tertiary markets that are part of a guaranteed fund are likely to receive more capital than they would have received as part of a non-guaranteed fund. In addition, properties with more complicated financing structures or other factors viewed as risky by LIHTC investors, such as housing for the disabled or homeless, tend to receive fewer dollars per tax credit, and consequently less capital. Fannie Mae's guaranty could drive higher pricing, *i.e.*, more dollars per tax credit, and increase liquidity specifically in those underserved areas where additional LIHTC equity is needed the most.

Federal law mandates that Fannie Mae take affirmative steps to "assist insured depository institutions to meet their obligations under the Community Reinvestment Act of 1977."[17] By

---

[17] HERA, 12 USC §4565(b)(3)(B).

offering an additional and much needed source for a guaranteed execution in the LIHTC market, Fannie Mae would facilitate CRA investments, especially during weak market conditions or in underserved markets. Fannie Mae's credit enhancement would serve to support pricing and sustain investor demand for the traditional investors, large banks, at times of market disruption. It would also facilitate those investors' appetite for more challenging projects that they may otherwise see as too risky.

Finally, a Fannie Mae guaranty would facilitate secondary market sales of existing LIHTC investments, which are a challenge to transfer due to the complex nature of most fund structures and terms. However, a guaranty from a highly rated counterparty like Fannie Mae would help to assure both new and experienced buyers in the secondary market that they will receive a minimum guaranteed return throughout market cycles. It would also serve to support liquidity and stability in the secondary market in turbulent economic cycles.

Providing a guaranty of LIHTC investments made by third parties will be a safe and sound activity for Fannie Mae. As guarantor, Fannie Mae will be engaging in many of the same ordinary, routine business activities required by its portfolio acquisitions, the strong historic performance of which has been highlighted above. As guarantor, Fannie Mae will apply its investment guidelines to underwrite individual projects and counterparties, as well as monitor and assess performance of the projects once they are in a fund.

Because Fannie Mae as guarantor will only assume liability for shortfalls below the guaranteed yield for any fund, its risk will actually be lower as a guarantor than when it acts as an investor. As described above, there is no material distinction between Fannie Mae's acquiring LIHTC investments for its own account, and guaranteeing the return on LIHTC investments of others, which creates less risk for Fannie Mae than making an equity investment. Both are important activities that satisfy Fannie Mae's obligations and are consistent with Fannie Mae's public purpose, as established under its Charter Act, the 1992 Act and HERA, to support the creation and preservation of low- and moderate-income housing.

Fannie Mae's ability to act as both an investor in and a guarantor of LIHTC equity investments will provide the Enterprise with the most effective and prudent tools to address any imbalances in tax credit pricing and capital allocation across market cycles, to attract new investors to the industry, to encourage a more robust secondary market for investors, and to stabilize the market during times of disruption. Serving as an investor alone will limit the Enterprise's ability to attract new investors and facilitate more liquid primary and secondary markets, while acting only as a guarantor will not enable Fannie Mae to target investment activity and increase demand for tax credits that support underserved markets and projects. However, a collective array of products will allow Fannie Mae to respond most effectively to market conditions by adjusting the volume or direction of its LIHTC activities during times of market volatility.

Finally, HERA and the Proposed Rule establish that the amount of investments in underserved markets is one of only four required factors in evaluating the Enterprises' compliance in meeting their Duty to Serve. Accordingly, permitting Fannie Mae to resume its LIHTC investment activities is an important means for enabling Fannie Mae to carry out its Duty to Serve. Fannie Mae's ability to undertake the recommendations set forth in this letter today will further enable us to rebuild the resources, infrastructure and counterparty relationships in advance of future market disruptions.

We appreciate the opportunity to deliver these comments. We take our mission seriously and are committed to being the leading provider of secondary market support for targeted affordable rental housing. We are keenly aware of the continuing crisis in the availability of affordable housing stock – even as the cost-constrained population in our country is growing. We believe that the LIHTC program is the most effective tool currently available to drive increased housing supply for low- and very-low income families, and that Fannie Mae is uniquely positioned to catalyze the reach and efficacy of the program. We urge FHFA to allow Fannie Mae to resume LIHTC equity investments so that we can leverage this critical tool to help ameliorate our country's pressing shortage of affordable housing for individuals and families in greatest need.

If you have any questions, please do not hesitate to contact me at (202) 274-8660, or Dana Brown, Director of Low-Income Housing Tax Credit Investments at (617) 345-8046.

Regards,

Jeffery Hayward

Jeffery Hayward
Executive Vice President - Multifamily