Preservation of Affordable Housing, Inc.
Amy S. Anthony, President

July 20, 2010

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA27
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington DC, 20552

Comments: RIN 2590-AA27 Enterprise Duty To Serve Underserved Markets

Dear Mr. Pollard:

On behalf of Preservation of Affordable Housing, Inc. (POAH), I appreciate the opportunity to comment on the notice of proposed rulemaking on the Enterprises' Duty To Serve Underserved Markets published by the Federal Housing Finance Agency in the *Federal Register* on June 7, 2010.

POAH is a national nonprofit specializing in the acquisition, rehabilitation, and long-term preservation of at-risk affordable housing. Since its founding in 2001, POAH has successfully preserved 6,600 units of affordable rental housing in 9 states and the District of Columbia in more than 40 separate transactions, yielding a current real estate portfolio worth nearly $450 million. POAH's comments below derive from this extensive experience financing the acquisition, renovation and preservation of affordable multifamily housing.

POAH strongly supports the establishment of the duty to serve the affordable housing preservation market, and its comments focus on that segment of the proposed rulemaking.

POAH is concerned that the FHFA's expressed intent to "limit the proposed rule to existing core business activities at the Enterprises and not to require that they engage in new lines of business as a result of the duty to serve" will severely curtail the impact of the new Duty To Serve requirement. As the background to the proposed rule notes, the Enterprises already have a broad obligation to serve moderate- and low-income borrowers – an obligation which is presumably reflected in affordable housing goals with respect to the Enterprises' existing core business activities. The establishment of meaningful Duty To Serve requirement under HERA necessarily suggests expansion beyond existing activities to address the needs of certain underserved markets, including the affordable housing preservation market.

In that light, POAH urges the FHFA to also include additions to the list of activities eligible for consideration under the affordable housing preservation duty.

The following initiatives, if undertaken by the Enterprises (some of which are within current activities, some of which are not) , would make significant contributions to the preservation market and should be credited against the Enterprises' duty to serve:

1) **Transfer existing LIHTC limited partnership interests to qualified preservation non-profits.** Through their investments in Low Income Housing Tax Credit (LIHTC) developments, the Enterprises have accumulated limited partner interests in hundreds of existing affordable

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LIHTC developments. These equity interests have been financially written down to nothing on the Enterprises' books, and the current uncertainty of how they may be disposed of (including the real possibility that they would be sold, with significant negative effects to the LIHTC equity market) is impeding preservation of significant existing federal investments in affordable housing. Preservation goals could be significantly enhanced by transferring the Enterprises' existing LP interests in LIHTC affordable housing developments to experienced, large-scale , mission-driven preservation non-profits (Qualified Nonprofits or "QNPs"), an activity which could be assessed under the 'investment and grants assessment factor'. Criteria for 'QNP' status must be determined, but might include: entity must 1) own or control 5,000 or more units; 2) have more than 5 years operating history; 3) have significant LIHTC experience as the owner of general partner interests in tax credit partnerships; and 4) be able to pass HUD 2530 clearance prior to transfer. We propose that HUD would take responsibility for determining QNP status as an adjunct to their existing entity status review processes. In order to protect the Enterprises against any LIHTC recapture obligations arising subsequent to transfers under the proposed program, the transfers would need to be accompanied by the execution of indemnification agreements similar to those required under the 1602 "Tax Credit Exchange" program.

2) **Provide letters of credit to back reserves required by Section 8 overhang.** In many of the strong economic markets where preservation of affordable housing is both most important and most difficult to achieve, the Section 8 HAP rents are greater than the maximum LIHTC program rents. The Enterprises could play a pivotal role in the preservation of Section 8-assisted affordable housing in such markets by providing an operating reserve letter of credit equal to 10% of the annual gross Section 8 assisted rent at the property. This 10 year letter of credit would enable syndicators to get comfort that they have a significant buffer against appropriations risk (i.e., the risk that resources to make payments under the HAP contract would not be appropriated by Congress and rents would fall back to LIHTC maximum rents), and decrease the amount of reserves required. This flexible loan product should be made available to all QNP's, which would be required to assume 10% of the risk, similar to the arrangement between FHA and housing finance agencies on loans insured under the FHA Risk Sharing program.

3) **Use OAHP and Mark to Market program rules to facilitate workouts and restructuring of over-leveraged affordable housing loans.** The Enterprises should contract with HUD to assist them in implementing a preservation program for at-risk properties with Enterprise-enhanced debt. HUD's Office of Affordable Housing Preservation (OAHP) programs, including Mark To Market, facilitate the preservation of overleveraged, at-risk affordable housing developments through transfers to new QNP owners, with restructuring and assumption of debt. The alternative to this kind of restructuring/transfer is often the outright loss of affordable housing through a foreclosure and disposition process, and the Enterprises could make significant contributions to affordable housing preservation by partnering with OAHP to restructure and preserve existing properties. The Enterprises would need to develop a process for accommodating DUS lenders or other parties with interests in the loans concerned – an issue HUD does not confront as sole debt-holder in OAHP restructurings – but POAH is confident that the right process can be developed to satisfy the needs of other parties in the context of preservation-focused debt restructurings.

4) **Continue preservation grant programs.** Very significant contributions to the national preservation effort are made by non-profits acting in furtherance of their charitable missions, and not economic self-interest. The Enterprises' grants to these entities have been an important element of keeping these mission-oriented players at the table, and it is urgent that these grant resources continue to be available.

5) **Create and deploy flexible lines of credit to enhance the attractiveness of LIHTC equity investments.** The Enterprises' abrupt exit from the LIHTC equity market in 2008 drove steep pricing declines and volatility which afflict the market to the present day, making LIHTC equity for preservation transactions expensive or unavailable. In the current market, sellers significantly outnumber buyers, and buyers leverage their position by imposing increasingly stringent underwriting, reserve and other requirements to shield themselves against perceived risks (despite the negligible incidence of recaptures over the history of the LIHTC program). Short of re-entering the market as LIHTC buyers, the Enterprises could do a great deal to stabilize and enhance the markets by creating flexible lines of credit which would be deployed to mitigate investor concerns and to enhance the attractiveness of LIHTC investments. Activities pursued under this initiative might include establishment of fund-level guarantees for LIHTC investment pools to protect investors against paper losses, recapture risk, or other concerns[1]; subordinate cash flow loans serviced with cash flow between 1.10 debt service cover and the 1.25 DSC limit of the first mortgage (to reduce hard LTV ratios); letters of credit to replace supplemental reserve requirements; and others not enumerated here which could be developed in response to evolving LIHTC investor requirements.

Thank you for the opportunity to provide these comments. If you have any questions, please contact me a (617) 449-0858 or aanthony@poah.org.

Sincerely,

Amy S. Anthony

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President,

Preservation of Affordable Housing, Inc.

[1] See Schwartz, Debra, "Enhancing LIHTC Investment in Preservation Projects", in *Innovative Ideas for Revitalizing the LIHTC Market*, a report issued by the Board of Governors of the Federal Reserve Bank System and the Federal Reserve Bank of St. Louis in November 2009: http://www.stlouisfed.org/community_development/assets/pdf/LIHTC.pdf