August 12, 2024

Ms. Marcea Barringer
Supervisory Policy Analyst
Federal Housing Finance Agency
400 Seventh Street SW, 9th Floor
Washington, D.C. 20219

RE: Duty to Serve 2025-2027 RFI

Dear Ms. Barringer:

Enterprise Community Partners (Enterprise) was pleased to participate in the 2024 Duty to Serve Public Listening Sessions hosted by the Federal Housing Finance Agency in July. We participated in two of the sessions, including rural housing and the preservation of affordable housing. However, all three topics, including manufactured housing, are policy areas that are critical to expanding and preserving our nation's affordable housing supply, and directly relate to Enterprise's mission of making homes places of pride, power, and belonging. We applaud FHFA for hosting these sessions.

Enterprise is a national nonprofit that exists to make good homes possible for the millions of people without one. Since 1982, Enterprise has invested $72 billion and created one million homes across all 50 states, the District of Columbia, Puerto Rico, and the US Virgin Islands. We support community development organizations on the ground, aggregate and invest capital for impact, and – across the Mid-Atlantic alone – serve as owner and operator of 14,000 affordable homes and provide resident services for 24,000 people. Enterprise also has researchers and advocates working to advance policy on a nonpartisan basis at every level of government.

Enterprise has compiled the following written comments on the topics covered in the listening sessions at the request of FHFA. These comments build on the recommendations provided by Enterprise's Ayrianne Parks, senior director of policy, on Housing Credit properties and preservation related to the right of first refusal (ROFR) and qualified contracts (QC), as well as on the insurance crisis, and Emily Nosse-Leirer, Policy Director, Rural and Native American Programs.

Preserving Housing Credit Properties

The Housing Credit is the nation's largest and most successful tool for encouraging private investment in the production and preservation of affordable rental housing. In fact, since its inception in 1986, the Housing Credit has financed the development of over 3.8 million apartment units and provided affordable homes to more than 9 million low-income families.

Enterprise appreciates the partnership of Fannie Mae and Freddie Mac, the Government-Sponsored Enterprises, or GSEs, in this crucial affordable housing program and we are pleased to count both as Housing Credit investors. There is strong alignment between Enterprise's mission and the vision laid forth by Director Thompson for FHFA and the GSEs. However, Enterprise has concerns that the baseline adjustments to key outcomes are not appropriate given the continued – and growing – need to preserve affordable homes. Any adjustments should be calibrated to program-specific estimates of market size in each plan year and should also reflect the new opportunities that are emerging as a result of new funding streams and policies that have been rolled out.

Since re-entering the market in 2018, both GSEs have deployed capital to support high-impact affordable housing development across the country, including for developments that preserve affordable housing. In fact, we again recommend that FHFA expressly provide Duty to Serve credit for Housing Credit equity investments in rural and non-rural markets that support affordable preservation of existing multifamily buildings. As investors with an explicit public purpose, the GSEs should put the highest priority on preservation of housing affordability for the longest possible time period; therefore, addressing QCs and ROFR should be explicitly incorporated in the GSEs' Duty to Serve plans.

QCs are resulting in the premature loss of 7,000 to 10,000 units every year; Enterprise strongly advocates for closing the QC loophole through federal legislation, as well as through state-level policies requiring a QC waiver as a condition of receiving a Housing Credit allocation. Enterprise remains grateful for the announcement last December that the GSEs will only make Housing Credit investments in projects that waive the QC provision. Enterprise, along with over a dozen partners, sent a letter last July to Director Thompson requesting this change.

Enterprise continues to be concerned about the practices of some owners of Housing Credit Limited Partner interests which has resulted in disputes and litigation over the terms of the Limited Partner's exit, particularly where a nonprofit holds a ROFR under Section 42(i)(7) of the Housing Credit program. In Enterprise's view, this litigation is contrary to Congressional intent with the ROFR provision and threatens the long-term preservation of these properties.

We recommend that FHFA and the GSEs take the following steps to advance preservation priorities:

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1. FHFA and the GSEs should require that Housing Credit funds in which they invest explicitly state in the fund partnership agreement that one of the business purposes of the fund is “to identify and implement strategies to maintain…properties as low-income housing subsequent to disposition.” Such a statement of purpose directs the syndicator sponsor of the fund to pursue preservation strategies, and it also enables a syndicator to push back on a substitute investor who may try to direct the fund to pursue profit at the expense of preservation. This statement of purpose is in Enterprise’s fund agreements, including with Fannie and Freddie.
2. The GSEs should require that the project-level partnership agreements for the Housing Credit properties in which they invest include in their statements of business purpose:
    a. To identify and implement strategies to maintain the property as low-income housing subsequent to the sale of the property; and
    b. During the Extended Use Period, operate the Credit Units in compliance with the Extended Use Agreement; and
    c. FHFA and the GSEs should also prohibit language found in some project-level partnership agreements which compels the general partner to submit a QC request, if requested by the limited partner; such provisions are entirely unnecessary and militate against the preservation purposes the GSEs should be advancing. These provisions would communicate strongly to all parties, including subsequent owners and investors, the express intent to keep properties affordable long-term.
3. FHFA should prohibit the GSEs from acquiring multifamily loans on Housing Credit properties unless the owner has agreed to waive their QC rights.
4. FHFA should also prohibit the GSEs from acquiring multifamily loans on properties financed with Housing Credits where an owner has taken the property through the QC process and terminated the rent and income limits on the property.
5. Enterprise supports the effort in Freddie Mac’s 2022-2024 Duty to Serve plan to include language in project-level partnership agreement provisions intended to protect nonprofit project sponsors from future transfer to parties who may move against their ROFR rights. We have worked with Freddie Mac to finalize this language in our nonprofit sponsored transactions. However, we notice the absence of this language in the current proposal.
    a. Some allocators, such as New York City, have adopted additional policies to achieve the purpose of the ROFR statute. FHFA and the GSEs should consider requiring that these provisions be included in the partnership agreements for projects in which they invest.
    b. Both GSEs should commit to never transfer their interest to a purchaser that has a history of denying the ROFR rights of nonprofits. The GSEs should commit to using language modeled on New York City’s Department of Housing Preservation and Development’s language in their single-investor investments.

Energy Efficiency

A critical component of affordable housing preservation strategy is the commitment to providing efficient, healthy, and resilient housing, both in new construction and through the rehabilitation of existing housing stock. Energy burdens across the market remain significant and much of the existing stock was built to prior to the implementation of – or at best to older, less stringent – energy codes. Increasing the purchase of loans financing efficiency improvements, especially those purchased in high energy-burdened areas, bringing that stock up to modern energy efficiency standards, can aid in reducing financial impacts felt by many low-income individuals and increase the climate resilience of those communities. We strongly support Freddie Mac and Fannie Mae's continued prioritization of energy and water efficiency objectives in their proposals; however, we were disappointed to note that more aggressive energy efficiency goals were not included in Fannie and Freddie's 2025-2027 DTS plans and we noted gaps in the commitments to loan purchases and education across housing types in the proposed plans. We urge both GSEs to commit to energy efficiency activities and objectives across all housing types served (single-family, multifamily, and manufactured housing).

Insurance

While the insurance crisis affecting affordable housing is not directly part of Duty to Serve, it is an urgent preservation issue. Skyrocketing insurance premiums and increasing climate risk are threatening the sustainability of the nation's supply of affordable housing. Enterprise calls on the GSEs to create processes that facilitate better insurance premiums, to prospectively evaluate catastrophic risk and work with borrowers to access lower-cost insurance, and to create grant programs to incentivize resilience and ensure that their loan products can be paired with other funding sources that make properties more resilient.

Native American and Tribal Housing

The GSEs' goals related to Tribal lands are contained under their legal obligation to serve rural markets, but it is essential to remember that the needs and characteristics of Tribal lands are unique from those of rural America more generally. Tribal communities have some of the greatest housing needs in the United States. Buying and developing homes on tribal trust lands remains a difficult process of navigating legal, supply chain, and other challenges, and the Duty to Serve plans should continue to recognize this.

Enterprise works with partners, including tribally designated housing entities (TDHEs), tribes, and housing coalitions across the country, to help meet housing needs of Native American communities and tribal members living on tribal trust land. This work is possible in large part due to the support that we and our partners receive from the GSEs. Our work includes providing trainings, playing active roles with Native American homeownership coalitions, and supplying capital for multifamily projects being developed by TDHEs.

We commend the GSEs for completing activities defined in earlier Duty to Serve plans to increase homeownership on Tribal lands, but we recommend the following steps to continue and improve their work:

1. FHFA should require a higher level of loan purchases through Fannie's Native American Conventional Lending Initiative and Freddie's HeritageOne product. Fannie's plan reaches a high of 20 annual purchases of loans made through NACLI or HUD 184 by 2027, compared to 25 for Freddie's plan. With almost 250,000 American Indian or Alaska Native households living in areas counted under these plans, we believe each plan should aim for at least 50 loans purchased by 2027.
2. FHFA should require Freddie Mac to make information on the overall performance of HeritageOne loans available to the public, and to receive public comment on the loan rollout.
3. FHFA should require the GSEs to increase their engagement with lenders near Tribal land. Neither NACLI nor HeritageOne can succeed without the participation of lenders near tribal lands. Native CDFIs play an invaluable role in the Tribal mortgage market, but the pool of lenders willing to work on Tribal lands must go beyond Native CDFIs to meet the demand for mortgages. Increased engagement will increase the banks' understanding of Tribal law and their willingness to lend on Tribal land.

Rural Housing

Preserving rural rental housing is a crucial part of meeting the housing needs of rural America. Homes built using USDA Section 515 loans are often the only affordable rental housing in rural communities. However, many of the buildings are aging and sources of additional affordable capital from USDA are extremely oversubscribed, especially as interest rates rise. However, ensuring that these properties can access funding to stay in service is a key part of the preservation equation.

We commend the GSEs for completing activities defined in earlier Duty to Serve plans to support the rural market, but we recommend the following steps to continue and improve their work:

1. FHFA should require Fannie Mae to increase the targeted number of Section 515 units assisted by loan purchase products. Enterprise appreciates the significant work that Fannie has put into the development of this loan purchase product and the fact that the product aided 248 units last year. Therefore, we encourage Fannie to build upwards from that number, rather than decrease the targeted units assisted.
2. FHFA should require the creation of a similar loan product at Freddie.
3. FHFA should encourage both GSEs to continue providing technical assistance to Section 515 owners. Property owners or purchasers, especially public agencies and small nonprofits, will require assistance to navigate USDA's new Stand Alone Rental Assistance program. Both Fannie and Freddie can play a key role in ensuring that rural rental housing remains affordable and is able to retain its rental assistance from USDA.

Moving Forward

Enterprise looks forward to working with FHFA to further refine the policies around preservation of Housing Credit properties financed by the GSEs. We appreciate the opportunity to have provided our recommendations during the July 17 affordable housing preservation session, as reflected in the summaries of our remarks, above.

Enterprise encourages FHFA to urge Treasury to clarify in writing that the GSEs are not Tax-Exempt Controlled Entities (TECEs), in line with the open letter that a bipartisan group of 20 senators led by Sens. Mark Warner (D-VA) and Jerry Moran (R-KS) sent to Sec. Yellen last June and one a bipartisan group of 20 representatives led by Reps. Dan Kildee (D-MI) and Darin LaHood (R-IL) sent last November. Ensuring this clarification is particularly important for both GSEs to continue to meet their obligation to invest in the rural multifamily housing market through Housing Credit deals. By reference, we incorporate our comments submitted to FHFA on this issue last summer.

Enterprise believes that public feedback on DTS plans is a valuable component of the policy process. To promote more informed feedback, we request that FHFA publish DTS and EHF evaluation data at an objective level. Such data would create the feedback loop needed for this strategic process to improve the GSEs' business processes. We also encourage FHFA to publish the evaluative data withheld to date.

We strongly recommend establishing consistent plan metrics across to the GSEs to allow FHFA and stakeholders to understand the scope and scale of the commitment to delivering capital or otherwise addressing the needs of underserved mortgage markets. For financing activities, GSEs should be required to report an anticipated range of capital in addition to a unit and property count. As seen in the different approaches the GSEs have taken to equity investment in rural markets, the obligations can be addressed through deep investment in individual properties or broad investment across a range of properties. Because the 2022-2024 Duty to Serve plans are incommensurable (although individually descriptive of targets), we lack a way to understand the systemic benefits of each approach. By instituting a common set of plan metrics for each activity, individual GSE commitments as well as the aggregate impacts on underserved markets can be better understood.

In addition, we again call upon FHFA to establish an overall Duty to Serve plan target for each of the three plan areas as a multiple (we recommend 110 percent) of the sum of the individual target activity components. With an aggregate DTS commitment literally greater than the sum of its parts, the GSEs should also be given greater flexibility to adjust individual targets based on changing market conditions while keeping their overall commitment to addressing the capital needs of underserved markets unchanged. For example, within the Affordable Housing Preservation plan, if a GSE cannot meet its intended commitment to purchase loans on Section

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515 properties, instead of seeking a plan modification simply lowering or reducing the target, the GSE would commit to (or point to) deploying capital through Housing Credit debt purchases so that the plan's intended level of support to underserved markets remains consistent over the life of the plan.

Again, we thank you for the opportunity to share our recommendations for addressing ongoing challenges facing these underserved markets and look forward to continuing to engage with you on these important issues. If you have any questions, please do not hesitate to reach out to Ayrianne Parks (aparks@enterprisecommunity.org) or me (ajakabovics@enterprisecommunity.org).

Sincerely,

Andrew Jakabovics
VP, Policy Development
Enterprise Community Partners