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RE: Public Comment on FHFA's Proposed Evaluation Guidance for Duty to Serve Program, and Comments on Fannie Mae's and Freddie Mac's Proposed Underserved Markets Plans

Dear Duty to Serve Program Experts:

Preserving City Neighborhoods Housing Fund Development Corporation ("PCN"), a not-for-profit organization that was incorporated in 2011 to act as a vehicle for the New York City Department of Housing Preservation and Development ("HPD") to acquire multi-family and single-family mortgage notes for the purpose of repositioning and preserving distressed or at-risk distressed housing in New York City, is hereby providing public comment on the above referenced draft documents.

<u>Background – Who We Are</u>

In 2015, the U.S. Department of Housing and Urban Development ("HUD") made changes to its Distressed Asset Stabilization Program ("DASP") which offered the City of New York the opportunity to acquire pools of Federal Housing Administration ("FHA") non-performing loans ("NPLs") for 1-4 unit properties through a direct negotiation for the first time instead of them being sold through an open auction. In response, HPD, PCN, the Center for NYC Neighborhoods ("the Center"), the National Community Stabilization Trust ("NCST"), and MHANY Management, Inc. ("MHANY") formed the Community Restoration Fund ("CRF") Program.

In terms of structure of the CRF Program, PCN owns the NPLs and is the fund manager. As such, it is responsible for managing the Program's financing and operations with oversight from HPD and participation from its non-profit partners. NCST is a national non-profit that specializes in the remediation of distressed single-family mortgages through its participation in note purchase programs in other parts of the country. NCST's role is to oversee the activities of PCN's servicer, SN Servicing Corporation, a specialized default mortgage loan servicer, who has been hired to manage the collection of homeowner payments, to review compliance with all applicable laws, and to ensure that all loan resolution activities are aligned with the CRF Program's goals. The Center and MHANY work with PCN, NCST and the servicer to conduct homeowner outreach, counsel homeowners, assist in mortgage modifications and provide relocation assistance services. The Center, through MHANY and its community organizing network, has implemented a high-impact strategy to connect homeowners to loan assistance and deliver intensive delinquency and default counseling with homeowners until sustainable outcomes have been reached.

Through the CRF Program, PCN has acquired 24 FHA distressed mortgage notes in targeted areas of New York City to achieve optimal outcomes for the properties and homeowners while implementing cohesive neighborhood strategies, with assistance from its program partners, to mitigate destabilization and blight. The CRF Program's core goals are to: (1) stabilize neighborhoods with high rates of foreclosure and distress; (2) ensure positive outcomes for homeowners and residents; and (3) maintain affordability and viability of the housing stock across New York City.

Through the CRF Program, home-retention solutions, such as affordable mortgage modifications that include principal reductions and/or forgiveness of arrears are the priority outcome. When a mortgage modification or refinance is not feasible, the Program strives to minimize displacement of homeowners and residents by establishing in-place rental outcomes. If homeowner retention is not possible, the Program seeks to provide relocation assistance to defaulted homeowners and ensure that the properties are repositioned as affordable homeownership or rental housing opportunities. Through the CRF Program's preservation efforts, PCN seeks to increase the quality of affordable housing for New York City' low and moderate income families, stabilizing neighborhoods and positively impacting the overall well-being of New York City.

To further stabilize New York City neighborhoods and ensure positive outcomes for homeowners and residents, PCN is actively working with HPD and its program partners to identify additional sources of distressed mortgage note sales, including those offered by Federal Housing Finance Agency's ("FHFA") Fannie Mae and Freddie Mac ("the Enterprises").

In an effort to establish a Community Impact Pool ("CIP") of geographically-concentrated pool of notes within New York City, HPD, PCN, and its program partners worked with Fannie Mae to determine the pool size and location of the notes within areas targeted by PCN through the CRF Program. PCN successfully participated in the bid auction for the New York City CIP in June 2017. Despite meeting and exceeding Fannie Mae's reserve price, PCN was outbid by a private investor by less than one percentage point.

This example illustrates that although Fannie Mae and Freddie Mac encourage non-profit participation in NPL sales through the creation of smaller pools of geographically-concentrated pools of notes, non-profit organizations are often unable to compete and win pools of notes when bidding against private investors, as is currently allowed under Fannie Mae and Freddie Mac's NPL sale guidelines. In order to further support non-profit organizations and local governments in bidding and winning these pools, Fannie Mae and Freddie Mac must make further enhancements to their NPL sales to mirror those of HUD's DASP, including limiting smaller pool offerings to non-profit organizations and local governments, in an effort to better serve homeowners, their communities, and the broader Single-Family Affordable Housing Preservation Market.

Comments – Fannie Mae's and Freddie Mac's Proposed Underserved Markets Plans

PCN is pleased to see the Enterprises' efforts to reach underserved markets, specifically the Single-Family Affordable Housing Preservation Market. PCN understands that the Enterprises' inventory of distressed properties – specifically non-performing loans – is declining overall, nationwide. However, as discussed in Fannie Mae's Underserved Markets Plan, many of these loans remain in the Enterprises' ownership, with New York State having one of the highest counts of these properties.

To address its inventory of distressed properties, the Enterprises established NPL sales. Overall, NPL sales reduce the number of delinquent loans held in the Enterprises' inventories, transfer credit risk to the private sector, and help to provide more favorable outcomes for homeowners and local communities than the outcomes that would be achieved if the Enterprises held the NPLs in their portfolios.

Fannie Mae offers and sells NPLs through a National Pool Offering ("NAT") and Freddie Mac offers and sells NPLs through a Standard Pool Offering ("SPO"). These pools are generally large and geographically diverse. Each Enterprise also offers pools structured to attract diverse participation by small investors, including non-profit organizations, minority- and women-owned businesses ("MWOBs"), and neighborhood advocacy organizations. Fannie Mae refers to these pools as Community Impact Pools ("CIPs") and Freddie Mae Refers to these pools as Extended Timeline Pool Offerings ("EXPOs"). CIPs and EXPOs are smaller sized pools that tend to be geographically concentrated and provide bidders an extended timeline to prepare bids to participate in the sales. All the Enterprises NPL sales are subject to requirements published by FHFA.

With the understanding that both Enterprises offer pools structured to target smaller investors, specifically non-profits and neighborhood advocacy organizations, it is imperative that the sale of NPLs is done responsibly, in a way that maximizes outcomes for homeowners and increases neighborhood stabilization. PCN understands that as of April 14, 2016, FHFA announced additional enhancements to its requirements for NPL sales in an effort to improve homeowner outcomes, with specific enhancements targeting CIPs and EXPOs. The NPL sale enhancements include the following, as defined in FHFA's Non-Performing Loan Sales Report from December 2016:

1) **Bidder Qualifications**: Bidders will be required to identify their servicing partners at the time of qualification and must complete a servicing questionnaire to demonstrate a record of successful resolution of loans through alternatives to foreclosure.
2) **Modification Requirements**: Servicers are required to evaluate all pre-2009 borrowers who apply for assistance for the U.S. Department of the Treasury's Making Home Affordable programs, including the Home Affordable Modification Program ("HAMP"). All post-2009 borrowers who apply for assistance must be evaluated for a proprietary modification, which must either be fixed rate for the term of the modification or limit payment increases consistent with HAMP requirements.
3) **Loss Mitigation Waterfall Requirements**: Servicers must apply a waterfall of resolution tactics that includes evaluating borrower eligibility for a loan modification (HAMP and/or propriety modification), a short sale, and a deed-in-lieu of foreclosure. Foreclosure must be the last option in the waterfall.
4) **REO Sale Requirements**: Servicers are encouraged to sell properties that have gone through foreclosure and entered Real Estate Owned ("REO") status to individuals who will occupy the property as their primary residence or to non-profits. For the first 20 days after any note that becomes an REO property is marketed, the property may be sold only to buyers who intend to occupy the property as their primary residence or to non-profits.
5) **Reporting Requirements**: Subsequent servicers must assume all the responsibilities of the initial servicer.
6) **Bidding Transparency**: To facilitate transparency and encourage robust participation by all interested participants, each of the Enterprises has developed a process for announcing upcoming NPL sale offerings. This includes an NPL webpage on the Enterprise's website, email distribution to small, non-profit, and MWOB investors, and proactive outreach to potential bidders.
7) **Reporting Requirements**: NPL buyers and servicers are required to report loan resolution results and borrower outcomes to the Enterprises for four years after the NPL sale.

Enhancements of NPLs that are specific to CIPs and EXPOs include the following:

1) **Small Pools**: The Enterprises will offer small, geographically concentrated pools of NPLs, where feasible, to maximize opportunities for non-profit organizations and MWOBs to purchase NPLs. The Enterprises will actively market such offerings to non-profits and MWOBs and provide additional time for buyers to complete the transaction.

As FHFA states, the goal of NPL sales are to reduce substantial inventories of NPLs and improve homeowner outcomes. FHFA is indeed accomplishing its goal to reduce the substantial inventories of NPLs, but the enhanced requirements for NPLs, specifically the creation of small pools of NPLs for sale through CIPs and EXPOs, fall short in creating a program that will substantially improve homeowner outcomes. More specifically, by not limiting the bidders of CIPs and EXPOs to mission-driven non-profits and local governments, FHFA is prioritizing disposition of NPLs to private investors, thus impeding homeowner outcomes. It is clear that FHFA can achieve its goals of (1) decreasing its NPL inventory, (2) increasing homeowner outcomes, and (3) improving neighborhood stabilization by further enhancing the program requirements by mirroring those adopted by HUD's DASP.

Recommendations

PCN has the following specific recommendations to better serve the Single-Family Affordable Housing Preservation Market:

1) **Bidder Qualifications**: In addition to requiring bidders to identify servicers who demonstrate a record of successful non-foreclosure resolutions, FHFA should also require that bidders of CIPs and EXPOs be exclusively non-profit organizations, local governments, or neighborhood advocacy organizations whose program goal is to optimize positive homeowner resolutions. Through this requirement, FHFA can further improve homeowner resolution outcomes and help stabilize communities.
2) **Targeted Pools**: To improve outcomes for homeowners and their communities, FHFA should increase access to smaller, geographically concentrated pools by non-profit organizations and local governments by restricting participation of for-profit entities in CIPs and EXPOs.
3) **Bidding Transparency**: To facilitate transparency of the NPL sales program and encourage robust participation by all interested participants, the Enterprises should establish a weighted bidding system whereby non-profit organizations, local governments, and neighborhood advocacy organizations that demonstrate (1) a connection to the community in which the NPLs for sale are located and (2) have the capacity and commitment to meet positive homeowner outcomes are given extra consideration. Furthermore, FHFA should establish a "First Look" process that gives these buyers the opportunity to be considered for pools before other bidders. Additionally, FHFA should establish a "Second Look" process that gives these same buyers the opportunity to match the highest bid on a pool or to bid to the upset price if the bid does not meet the Enterprises' reserve price.
4) **Direct Sales**: In an effort to prioritize non-profit participation and focus on home retention through mortgage modifications for long-term affordability, FHFA should establish direct sales of NPLs for competitive bids limited to non-profit organizations and local governments, as adopted by HUD's DASP.

To meet their desired goals, the Enterprises can and should do more to ensure that their NPL sales programs both improve homeowner outcomes and reduce NPL inventories. These recommendations were specifically developed to support non-profit organizations and local governments in acquiring NPLs from the Enterprises. As mission-driven entities, non-profit organizations and local governments prioritize the achievement of optimal outcomes for homeowners and their properties as well as implementing cohesive neighborhood strategies. By adopting the proposed recommendations to strengthen bidder qualification requirements and establish policies that support non-profit organizations and local governments in purchasing NPLs, the Enterprises would honor their commitment to the stated goals of the NPL sales program.