

August 15, 2022

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 Sessions on Affordable Housing Preservation and Rural Housing

Dear Ms. Barringer:

Enterprise Community Partners (Enterprise) was pleased to participate in the series of 2022 Duty to Serve Public Listening Sessions hosted by the Federal Housing Finance Agency in July. All three topics, including preserving Low-Income Housing Tax Credit (Housing Credit) properties, manufactured housing, and Native American housing are policy areas that are critical to expanding and preserving our nation's affordable housing supply and directly tie to Enterprise's mission of making homes places of power, pride, and belonging.

Enterprise is a national nonprofit that exists to make good homes possible for the millions of people without one. Since 1982, Enterprise has invested \$54 billion and created 873,000 homes across all 50 states. We support community development organizations on the ground, aggregate and invest capital for impact, and serve as owner and operator of 13,000 affordable homes and provide resident services for 22,000 people across the mid-Atlantic. 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 from the recommendations provided by Enterprise's Ayrienne Parks, senior director of public policy, on Housing Credit properties and preservation related to the right of first refusal (ROFR) and qualified contracts (QC); and Jennie Rodgers, vice president of our Mountain, Tribal Nations, and Rural market office, who spoke on Native American housing.

### **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 approximately 3.6 million apartments and provided affordable homes to about 8 million low-income families.

Enterprise appreciates the partnership of Fannie Mae and Freddie Mac, the government sponsored entities 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.

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, so we appreciate that FHFA is focusing on important preservation issues such as QCs and ROFR.

QCs are resulting in the direct premature loss of some 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 is also 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:

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. 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
  - To identify and implement strategies to maintain the property as low-income housing subsequent to the sale of the property; and
  - During the Extended Use Period, operating the Credit Units in compliance with the Extended Use Agreement
    - i. FHFA and the GSEs should also *prohibit* language found in some project-level partnership agreements which compels the general partner to submit a Qualified Contract request, if requested by the limited partner; such provisions are entirely unnecessary and militate against the preservation purposes the GSEs should be advancing
    - ii. These provisions would communicate strongly to all parties, including subsequent owners and investors, the express intent to keep properties affordable long-term
3. Enterprise supports the effort in Freddie Mac's 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.
  - 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.

## **Native American Housing**

Enterprise works with partners, including tribal housing entities, tribes, and coalitions across the country, to help meet housing needs in Native American communities. 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 providing training tools and capital for multifamily projects being developed by tribal housing entities.

Native American homeownership coalitions are growing across the country. The South Dakota, New Mexico, and Montana Native Homeownership Coalitions are established and building capacity among members to increase homeownership opportunities on trust land. Idaho is beginning to build a coalition as well. In Alaska and Hawaii, tribal housing coalitions are educating members, increasing access to GSE and federal loan products, and increasing homebuyer education trainings.

Coalition members support each other and organizations like Enterprise are able to offer additional training and technical assistance to multiple tribal housing entities at one time through such coalitions. The coalitions offer opportunities for tribes, Tribally Designated Housing Entities, Native CDFIs and Tribal Housing Authorities to learn and support each other. Participants receive a range of resources, including grant funding, training and technical assistance covering topics such as land lease processes, mortgage financing and ordinances, community planning, homebuyer readiness, and design and construction.

The coalition model also allows groups to identify challenges and offer unique solutions. In South Dakota, for example, the Coalition has created a highly successful construction internship program to simultaneously tackle the lack of decent homes for buyers, a scarcity of skilled Native contractors and subcontractors working in native communities, and the need for better-paying jobs for tribal members. There is interest among other coalitions in implementing similar programs. Other challenges that coalitions are discussing include a lack of building codes and building inspectors on tribal land, the need for appraisers who come from and live within native communities, and a lack of culturally relevant mortgage products.

We recommend that FHFA and the GSEs take the following steps to improve opportunities for homeownership for tribal communities:

1. Continue support for Native Homeownership Coalitions and other groups advancing equitable housing for Native communities. Support from Freddie Mac has allowed Enterprise's partners to offer multiple training series to Tribal housing entities through learning community cohorts.
2. Continue to provide technical assistance for Native CDFIs to support their growing role as mortgage originators and servicers on tribal lands.
3. Maintain a commitment to offering culturally relevant mortgage products.

## **Moving Forward**

Enterprise looks forward to working with FHFA to further refine the policies around preservation of Housing Credit properties financed by the GSEs and encouraging increased targeting of resources and support to Native American housing needs. We appreciate the opportunity to have provided our recommendations during the July 11 Housing Credit session and July 13 Native American session, as reflected in the summaries of our remarks, above.

We are also interested in collaborating with FHFA on recommendations related to Duty to Serve activities to support manufactured housing. Enterprise is working with partners around the country to ensure that robust protections are in place for renters and owners of manufactured housing. We are also focusing our efforts to ensure the long-term affordability of this critical housing stock. This includes providing \$20 million to increase ROC USA Capital's capacity to help residents of manufactured housing communities buy the communities where they live and directing \$1 million to support state and local policy efforts to promote the health, safety and efficiency of manufactured housing and expand tenant protections. Enterprise appreciates the GSEs' adoption of Tenant Site Lease Protections for all tenants of manufactured housing communities they fund, and we look forward to continued collaboration on expanding supply, reducing costs, and increasing resident stability for this critical supply of affordable housing.

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 Ayrienne Parks ([aparks@enterprisecommunity.org](mailto:aparks@enterprisecommunity.org)) or me ([ajakabovics@enterprisecommunity.org](mailto:ajakabovics@enterprisecommunity.org)).

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Jakabovics", with a long horizontal flourish extending to the right.

Andrew Jakabovics  
VP, Policy Development  
Enterprise Community Partners