July 21, 2023

Marcea Barringer
Supervisory Policy Analyst
Federal Housing Finance Agency
400 Seventh Street SW
10th Floor
Washington D.C. 20219

RE: Duty to Serve 2023 RFI

Dear Ms. Barringer:

The National Council of State Housing Agencies (NCSHA),[1] on behalf of the nation's state housing finance agencies (HFAs), thanks the Federal Housing Finance Agency (FHFA) for the opportunity to comment on Fannie Mae's proposed modification to its Duty to Serve (DTS) Plan for 2022-2025.

We are greatly concerned about Fannie Mae's sole proposed change to its DTS Plan, which would significantly reduce the firms' 2023 baseline for Housing Credit equity investments in qualified rural areas from 70 to between 20 and 40. This proposed reduction would significantly curtail Fannie Mae's efforts to address the critical shortage of affordable housing options for rural families and communities. We urge FHFA not to permit such a drastic reduction.

The Housing Credit is our nation's most effective tool for financing the development of rental housing affordable to low-income Americans. Fannie Mae's reentry into the Housing Credit market in 2018 came at a critical time, as the lower corporate tax rate enacted by the Tax Cuts and Jobs Act of 2017 had put downward pressure on the price of Housing Credits. This continues to be a particularly acute issue for Housing Credits that support developments in rural markets, which often do not have the same potential pool of investors as projects in urban areas, where financial institutions purchase Housing Credits to earn credit under the Community Reinvestment Act.

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[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

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Furthermore, developing affordable rental housing in rural areas can often be much more difficult than in other areas. Because incomes in rural areas are often lower than incomes in urban or suburban communities, the rents on rural Housing Credit properties must be set at relatively low levels to meet program income standards. This means rent payments cover a smaller amount of a project's operating costs. It can also be more difficult to scale costs through larger projects in rural areas, which are often too sparsely populated to support larger developments.

Fannie Mae's rationale for the proposed modification is that a question of tax law interpretation has limited its ability to participate in multi-investor pools to make Housing Credit investments. We sympathize with Fannie Mae's concerns. Most investors in Housing Credit properties invest through multi-investor funds, allowing them to limit their risk even when these funds invest in underserved markets where investment can be more challenging. Multi-investor funds often finance properties in rural areas or permanent supportive housing developments, whereas a single-investor proprietary fund may be unwilling to take on the risk of these types of properties.

Fannie Mae participation in multi-investor Housing Credit pools provides needed liquidity for Housing Credit properties in rural areas and is a valuable tool in the firm's efforts to meet its obligations to support affordable rural housing options. Fannie Mae in recent years has made the large majority of its Housing Credit investments through multi-investor funds. It is also our understanding that, while Freddie Mac has so far only invested in Housing Credits through proprietary funds, it is actively considering participating in multi-investor funds.

Unfortunately, multi-investor funds that include – or might include – Fannie Mae have been negatively impacted by concerns raised about the tax treatment of their investments. Specifically, some have suggested Fannie Mae and Freddie Mac may qualify as Tax Exempt Controlled Entities (TECE) under Section 168(h)(6)(F)(i) of the Internal Revenue Code. This diminishes participation in multi-investor funds that include Fannie Mae, because, if any fund participants qualify as TECEs, then all fund participants lose the ability to access certain tax benefits, including accelerated depreciation, bonus depreciation, historic rehabilitation tax credits, and certain energy credits.

NCSHA has asked Treasury to issue written guidance clarifying that Fannie Mae and Freddie Mac are not covered under the TECE definition. We recommend that FHFA press Treasury to issue such an interpretation so Fannie Mae and Freddie Mac can continue to make critical investments in Housing Credit properties serving rural communities and other high-needs populations.

While we understand why the TECE issue has impacted Fannie Mae's ability to participate in the Housing Credit market, Fannie Mae is proposing to cut its baseline for such investments by as much as 70 percent a time when there is a dire need for affordable housing in our nation's rural towns and counties. Often, the Housing Credit is the only source of financing available for affordable multifamily homes in rural areas.

Such a steep reduction cuts against the DTS rule's mission to promote affordable housing in rural areas. We urge FHFA to work with Fannie Mae, as well as Freddie Mac, to determine how both firms can continue to substantially support the Housing Credit market until Treasury offers guidance on the TECE question.

Thank you again for the opportunity to comment. Please let us know if we can provide any additional information as you consider our recommendations.

Sincerely,

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives