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Attention: Duty to Serve 2023 RFI

Marcea Barringer,

Guided by a vision of a nation where persistent poverty no longer exists, six regional Community Development Financial Institutions (CDFIs) located in and serving regions with a high prevalence of persistent poverty came together. The CDFIs—Come Dream | Come Build (cdcb) of Brownsville, Communities Unlimited, Fahe, First Nations Oweesta Corporation, HOPE Credit Union and Enterprise Corporation, and Rural Community Assistance Corporation—formed a coalition, currently called the Partners for Rural Transformation (PRT). With a shared ethos of investing in both people and places and informed by the local voices of our regions, we seek to unify opportunities in diverse communities at a time of great division in our nation. A closer look at persistent poverty in America reveals how structural exclusion by place and race continues to paint a picture that is steadfastly rural and marred by racial, capital and data inequity. These challenges are exacerbated by a history of disinvestment and data extraction.

Rural America faces systematic, avoidable, and unjust economic, health, and racial disparities. Legacies of forced geographic and cultural displacement, enslavement, financial discrimination, residential segregation, and transitioning economies have left an indelible mark. Despite evidence of persisting rural inequities, there is no coordinated effort to build a comprehensive evidence base to support deep systems change – that is, to generate research that informs the shifts in policies, practices, resources, power, trust, and attitudes necessary to advance equity.

Rural America, especially in areas of persistent poverty, has suffered disinvestment over previous decades. We are seeing the impacts of this disinvestment across federal and state agencies in almost every sector of life. Of the 395 persistent poverty counties, eight out of ten are nonmetro (rural). The majority (60%) of people living in persistent poverty counties are people of color. In fact, 4 out of 10 (42%) persistent poverty counties are majority people of color.

It is well known that the Low-Income Housing Tax Credit (LIHTC) program is critical to our country's preservation and creation of affordable housing options. This is especially true in regions where persistent poverty and racial discrimination are prevalent, the majority of which are rural, Native or communities of color. Rural CDFIs and regional rural-serving financial entities are typically the only entities a community has to rely on when it comes to lending and other community development services. This makes the Duty To Serve Program (DTS) even more important in communities without affordable housing options or access to financing a home without predatory lending practices.

As seen in PRT's most recent comment to the FHFA, we applaud the codifying FHFA's oversight of the Enterprises. This is a critical step to ensure there are policies for instances, like the current modification proposal from Fannie Mae, has a clear process, implementation, public feedback, evaluation, and, most notably: the ability for FHFA to approve or deny the proposal to the modification.

With Fannie Mae submitting a Plan Modification Request form to the FHFA, many PRT Partners and rural housing and financing organizations have concerns regarding the requested modification, specifically with the impacts to the rural, Native, and persistently poor communities we serve. Please find our recommendations below, and the recommendations submitted by one of our National Partners, the Housing Assistance Council (HAC). PRT also supports the points made from the Lincoln Institute of Land Policy.

Clarity on the Enterprises Treatment

PRT requests the same suggestion our national Partner HAC states in their comment letter: that the Treasury Department issues guidance as soon as it is practical to confirm or deny the treatment of Fannie Mae and Freddie Mac ("the Enterprises") as tax-exempt controlled entities under section 168(h)(6) of the Internal Revenue Code. PRT realizes that this is a complex tax-related issue and will require a multitude of statutory provisions, but we uplift the National Association of State and Local Equity Fund's belief that the purpose of the tax-exempt entity rules is not wholly applicable in this case where Treasury acquired control of the Enterprises.

The Enterprises' investments in affordable housing – made pursuant to regulatory requirements through FHFA –are not an attempt to circumvent the restrictions on tax-exempt use property as contemplated by Congress. They do not involve a situation where a government agency is attempting to utilize a tax-subsidized lease to avoid federal budgetary laws. Treasury is not the type of tax- exempt entity contemplated by these rules that might otherwise be subject to the unrelated business income tax if it directly purchased the property. And, under the Housing and Economic Recovery Act of 2008, Congress mandated that the Treasury Department provide support to the GSEs to preserve market presence, not to be treated as an owner.

Impacts of Fannie Mae's Modification Request

Currently, Enterprises has approved Plans in place for the FY2023. With a sudden legal issue that is out of the control of the Enterprises, Fannie Mae has proposed a modification to their plan for Duty To Serve Low Income Housing Tax Credit equity investments (Objective 1 (FN_Rural_LIHTC_1): Invest in LIHTC properties in rural areas). This modification, simply put, will end up further exacerbating the affordable housing crisis in regions of rural persistent poverty, the majority of which are communities of color. This would be yet another example of market changes disproportionately affecting these areas, widening the homeownership and racial wealth gap.

In full transparency, the minimum thresholds that have been set are already lower than these communities need to truly prosper. Freddie Mac has committed to a bottom line of seven rural LIHTC equity investments for 2023, and Fannie Mae has committed to a minimum of 70. While we respect that Fannie Mae has a higher bottom line to serve the Rural Housing Market, issuing a Non-Objection to this modification will essentially make Rural Affordable Housing Preservation and Creation efforts moot in these regions. The systemic and chronic disinvestment over the past decades has created an unequitable opportunity to access capital, making capacity building and community development near impossible. It does not make sense, nor is it equitable, to modify (decrease) the already low bottom-line LIHTC equity investments Fannie has committed to, in communities that are, by FHFA definitions, already underserved.

Historic and current disinvestment has forced rural organizations to utilize complex capital stacks to fund a project through its completion (and to sustain a project post-finish date). Capital stacking is a financial "norm," and it is very often the only way essential capital and projects are completed and successful in rural and persistently poor communities. PRT understands that losing reliable and consistent investors that Fannie is used to working with may be challenging due to questions to the tax benefits investors obtain when investing with Fannie Mae dollars, but it is essential to realize this reality, and to be adaptable to finding flexible funding to fill the gaps from the lack of investors, much like rural has had to do to survive for decades now. There are numerous experts in the rural CDFI field that can efficiently and masterfully layer funding, identify new strategic investors, and still build capacity within a community, that FHFA and the Enterprises could speak with, learn from, and model after. This deeper partnership will allow the Enterprise's to more meaningfully target their LIHTC equity investments. If it is not within Fannie Mae's power to fix this, Fannie Mae should advocate for legal accommodations to maintain their stake in multi-investor projects. The Partners for Rural Transformation stand at the ready, offering, and willing, to help advocate for and assist Fannie Mae in any way that is needed to maintain their original goal of LIHTC equity investments.

Sole-Investor Model Solution

One solution to addressing the change in market and legal issue affecting Fannie's LIHTC equity investments in rural housing could be reinstating an older method of Fannie financing. Fannie could more commonly become the sole investor of the remaining LIHTC equity investments (and for others in the future). This would allow Fannie to meet the objective as planned, while not having a negative, long-lasting impact on already underserved communities. There are potential limitations to this, such as sole investors may be too burdensome for the rural market in current market conditions. To mitigate this result, the dollars GSE's can invest should be increased, and this increased dollar amount should be designated as rural-specific dollars to help reach the original objective set by Fannie Mae.

While PRT acknowledges that there is a maximum capacity for Fannie in sole-investor funding, PRT advocates more broadly to ask the FHFA to either raise that maximum cap, or eliminate it, at least until the legal issue is resolved that is threatening Fannie's ability to be included in multi-investor opportunities in the rural housing market. Raising the maximum funding ($850m annually) for sole-investor dollars will allow the Enterprises to better meet the rural housing LIHTC equity investment objectives in 2023, and future years, despite the pull-back from investors on multi-deals until the treatment of the Enterprises as tax-exempt entities is made clear.

Conclusion

PRT strongly urges Treasury to provide guidance on this issue, urges Fannie Mae to adapt to the new market conditions without lowering their LIHTC equity investments. We encourage FHFA to raise or eliminate the sole-investor maximum amount to allow Fannie to complete the mission of Duty To Serve, as well as to not issue Fannie Mae a Non-Objection. We are available to address any questions you may have about the potential impact this will have on our work meeting the needs of rural regions of persistent poverty that our Partners serve.

In partnership,

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