Enterprise

July 31, 2023

Ms. Marcea Barringer
Supervisory Policy Analyst
Federal Housing Finance Agency
400 Seventh Street SW, 8th Floor
Washington, D.C. 20219

RE: Duty to Serve 2023 Listening Sessions on Affordable Housing Preservation

Dear Ms. Barringer:

Enterprise Community Partners (Enterprise) was pleased to participate in the 2023 Duty to Serve Public Listening Sessions hosted by the Federal Housing Finance Agency in July. All three topics, including rural housing, manufactured housing, and the preservation of affordable 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. We applaud FHFA for hosting all three 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 $64 billion and created 951,000 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 13,000 affordable homes and provide resident services for 23,000 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 from the recommendations provided by Enterprise's Ayrianne Parks, senior director of public policy, on Housing Credit properties and preservation related to the right of first refusal (ROFR) and qualified contracts (QC).

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 3.7 million apartment units and provided affordable homes to more than 8 million low-income families.

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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.

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 and Tribal Housing

Tribal communities have some of the greatest housing needs in the United States. HUD's 2017 study, "Housing Needs of American Indians and Alaska Natives in Tribal Areas," found that Native Americans living on tribal trust land live in homes with physical deficiencies such as lack of plumbing or electricity at almost five times the national average. Sixteen percent of households in tribal areas live in overcrowded homes, almost seven times the national average. To remedy overcrowding, 68,000 new homes are needed on reservations and tribal lands. There is no way to remediate these conditions without funding for repairs, additional construction, and capacity building. Enterprise works with partners, including tribally designated housing entities (TDHEs), tribes, and 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 providing training tools and capital for multifamily projects being developed by TDHEs.

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 building a coalition as well. In Alaska and Hawaii, Native 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 TDHEs at one time through such coalitions. The coalitions offer opportunities for tribes, TDHEs, 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 tribal 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, and support from Fannie Mae funds housing capacity building for Enterprise's tribal partners.
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, including Freddie Mac's recently released Heritage One program.

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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 19 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 on June 23. 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 on July 21.

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.

For the upcoming Duty to Serve cycle, 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 current 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.

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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 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 LIHTC 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