NMTC WORKING GROUP™
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Mr. Clinton Jones
General Counsel
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20219

Submitted via https://www.regulations.gov; emailed to FHFA at RegComments@fhfa.gov

Re: Enterprise Duty to Serve Underserved Markets Amendments; RIN 2590-AB64

Dear Mr. Jones:

On behalf of the New Markets Tax Credit Working Group (the "NMTC Working Group"), we appreciate the opportunity to submit comments on the Federal Housing Finance Agency's ("FHFA") proposed rule, Enterprise Duty to Serve Underserved Markets Amendments (RIN 2590-AB64). The NMTC Working Group is composed of more than 120 organizations from across the industry, including allocatees, nonprofit and for-profit community development entities ("CDEs"), consultants, investors, accountants, and lawyers, who collaborate to address technical program issues and identify practical opportunities for improvement. The goal of the NMTC Working Group is to help strengthen the effectiveness and administration of the NMTC program so it can continue delivering meaningful benefits to qualified businesses in low-income communities across the country.

The NMTC Working Group appreciates FHFA's request for comment regarding whether Fannie Mae and Freddie Mac (the "Enterprises") should be permitted to invest in NMTCs to increase housing supply and receive Duty to Serve ("DTS") credit as appropriate. The NMTC Working Group strongly supports Enterprise participation and investment in NMTCs and urges FHFA to recognize qualifying NMTC investments as eligible DTS activities when those investments have a housing nexus and are undertaken consistent with applicable law, FHFA oversight, and Enterprise safety and soundness requirements.

EXECUTIVE SUMMARY

The NMTC Working Group respectfully recommends that FHFA:

- Permit the Enterprises to make NMTC investments that support housing production, preservation, and related community development activities;

- Recognize qualifying NMTC investments as eligible DTS activities;
- Allow DTS credit for qualifying NMTC investments within each of the three underserved markets: rural housing, manufactured housing, and affordable housing preservation; and
- Adopt a practical definition of housing that includes single-family and multi-family for - sale housing development (including new construction and acquisition/rehabilitation), mixed-use developments and community facilities that directly support housing production, preservation, affordability, or long-term community stability.

These recommendations are fully aligned with the statutory purpose of DTS and would provide the Enterprises with an additional mechanism to attract private capital, address financing gaps, and support housing opportunities in underserved communities and markets.

NMTC INVESTMENTS ADVANCE THE DUTY TO SERVE MISSION

The DTS statute is intended to improve the flow of capital to underserved housing markets and to encourage innovative approaches to addressing persistent financing challenges. The NMTC serves a similar purpose by leveraging private-sector capital to finance projects in low-income communities that often cannot be completed using conventional financing alone.

FHFA's framework creates an opportunity to recognize NMTC investments as a valuable tool for increasing for-sale housing production, preserving existing affordable housing, and supporting long-term community development.

Many housing transactions require more than mortgage debt to be financially feasible. Properties targeted for affordable housing preservation frequently face substantial rehabilitation needs. Rural developments often require infrastructure investment. Manufactured housing communities may require improvements to maintain long-term affordability. In each of these situations, NMTC financing can provide flexible capital that fills critical funding gaps and enables financial feasibility.

ENTERPRISE PARTICIPATION WOULD STRENGTHEN THE NMTC EQUITY MARKET

Allowing the Enterprises to participate as NMTC investors would introduce an additional source of mission-oriented capital into the NMTC marketplace outside of CRA-motivated financial institutions and would support the broader policy objective of increasing housing supply, including affordable for-sale housing supply, in underserved communities.

Enterprise participation could increase the availability of capital for housing-related NMTC transactions, improve liquidity and pricing efficiency within the NMTC market, expand investment opportunities in rural and underserved communities, support innovative housing and preservation strategies that depend on layered financing structures, and complement existing Enterprise loan purchase and financing activities.

Importantly, Enterprise participation would not alter the underlying NMTC program framework. Investments would continue to be made through certified CDEs and remain subject to existing federal oversight, compliance requirements, investor due diligence standards, and transaction-level underwriting.

DUTY TO SERVE CREDIT SHOULD BE AVAILABLE FOR QUALIFIED NMTC INVESTMENTS

The NMTC Working Group believes that permitting Enterprise investment without providing corresponding DTS recognition would unnecessarily limit the effectiveness of the policy. Qualifying NMTC investments should receive DTS credit when they directly support housing objectives within one or more underserved markets.

The most appropriate evaluation treatment is the investments and grants component or another clearly identified component that recognizes capital investments that assist in meeting underserved market needs. While NMTC investments typically do not finance mortgage purchases and should not be required to satisfy a mortgage-purchase framework to receive DTS credit, they should be treated in a manner similar to LIHTC investments that are currently eligible for rural housing DTS credit. Moreover, NMTC investments should be evaluated as investments that help create, preserve, rehabilitate, or enable housing supply and affordability.

Appropriate examples include:

- development of new construction affordable for-sale housing;
- acquisition and rehabilitation and preservation of existing single-family and/or multi-family units for sale to low- to moderate-income homebuyers;
- preservation of affordable rental housing;
- development of housing in rural communities;
- preservation or expansion of manufactured housing communities;
- financing that assists businesses involved in the production of manufactured housing;
- mixed-use developments that include affordable housing; and
- community facilities, infrastructure, or site improvements that are necessary to support housing development or preservation.

Providing DTS credit for these investments would encourage additional private capital formation while helping the Enterprises satisfy their statutory obligation to serve underserved housing markets.

APPLICATION ACROSS THE THREE DUTY TO SERVE MARKETS

Affordable Housing Preservation

Affordable housing preservation represents one of the most significant housing challenges facing communities across the country. Aging properties, increasing rehabilitation costs, and expiring affordability restrictions often require additional sources of capital. NMTC financing can serve as an important complement to existing preservation tools and help maintain long-term affordability. FHFA should permit NMTC investments to receive DTS credit where they preserve existing affordable housing, extend affordability restrictions, support recapitalization of aging affordable properties, or finance rehabilitation and related improvements necessary for long-term sustainability.

Rural Housing

Rural communities frequently encounter limited access to capital, smaller transaction sizes, infrastructure challenges, and limited financing options that make housing development difficult. NMTC financing has a long history of supporting projects in rural and highly distressed communities. Internal Revenue Code section 45D(i)(6) helps ensure that non-metropolitan counties receive a proportional share of national qualified low-income community investments, which the CDFI Fund has set at 20%. NMTC financing can provide a valuable source of flexible capital for rural housing initiatives, including rural affordable homeownership, rural rental housing, housing-related infrastructure, and mixed-use rural projects where housing supply is a central objective or is directly enabled by the investment.

Manufactured Housing

Manufactured housing remains one of the nation’s most important sources of affordable housing. NMTC financing can support improvements, preservation efforts, community infrastructure, and other investments that enhance long-term affordability and stability. FHFA should permit DTS credit for NMTC investments that support manufactured housing communities, resident-owned or nonprofit-sponsored preservation, financing that assists businesses involved in the production of manufactured housing, infrastructure and site development, and other activities that materially expand or preserve affordable manufactured housing opportunities.

HOUSING SHOULD BE DEFINED BROADLY FOR PURPOSES OF NMTC ELIGIBILITY

The NMTC Working Group encourages FHFA to adopt a practical definition of housing that reflects the realities of community development financing. Housing is often delivered through projects that include residential, commercial, community facility, and infrastructure components. A narrow definition that focuses exclusively on residential units would exclude many projects that directly support housing affordability and community stability.

For purposes of DTS credit, qualifying NMTC investments should include affordable homeownership developments, mixed-use developments with a meaningful housing component, community facilities that support housing residents, infrastructure and site improvements necessary for housing development, and other projects that demonstrate a direct connection to housing production, preservation, or affordability.

The appropriate standard should be whether the investment has a clear and measurable housing nexus rather than whether every dollar is spent directly on residential construction. However, where an NMTC investment directly enables, preserves, or materially supports housing supply or affordability in an underserved market, FHFA should recognize that activity as consistent with the objectives of the DTS mandate.

CONCLUSION

The NMTC Working Group supports FHFA's efforts to focus Enterprise activity on meaningful outcomes in underserved housing markets. Permitting the Enterprises to make qualifying NMTC investments would be consistent with that objective and would provide an important additional tool to increase housing supply, preserve affordable housing, and support housing-related community development in low-income communities.

The NMTC Working Group respectfully urges FHFA to use the final rule to permit Fannie Mae and Freddie Mac to invest in NMTCs, recognize qualifying NMTC investments as eligible DTS activities, allow DTS credit within the rural housing, manufactured housing, and affordable housing preservation markets, and adopt a practical definition of housing that includes mixed-use developments, community facilities, infrastructure, and other projects that directly support housing outcomes.

These changes would further the objectives of the DTS statute, encourage additional private investment in underserved communities, and help increase housing production and preservation where it is needed most.

We hope that you find these comments, considerations, and recommendations helpful as you finalize the Proposed Regulations. Thank you in advance for your time and consideration. Please do not hesitate to contact me if you have any questions regarding our comments or if we can be of further assistance. We would be happy to discuss our comments in further detail.

Yours very truly,
Novogradac and Company LLP

by

Brad Elphick