



We help build homes and communities across rural America.

July 13, 2022

The Honorable Sandra Thompson  
Director  
Federal Housing Finance Agency  
400 7th Street SW, 10th Floor  
Washington, D.C. 20219

RE: Duty to Serve Rural Housing Listening Session – Topic: Native American Housing

Dear Director Thompson,

The Housing Assistance Council (HAC) appreciates the opportunity to offer comments to the Federal Housing Finance Agency (FHFA) on the Enterprises' (Fannie Mae and Freddie Mac) 2022-2024 Duty to Serve Plans, specifically with respect to Native American Housing.

HAC helps build homes and communities across rural America. Founded in 1971, headquartered in Washington, D.C. and working in all 50 states, HAC is a national nonprofit and a certified community development financial institution (CDFI). We are dedicated to helping local rural organizations build affordable homes and vibrant communities. We provide below-market financing, technical assistance, training, and information services. HAC also serves as rural America's "Information Backbone" with leading public and private sector institutions relying on HAC's independent, non-partisan research and analysis to shape policy. Thus, HAC is uniquely positioned to provide comments and insights on the 2022-2024 Underserved Markets Plans.

Through the Duty to Serve mandate, the Enterprises are rightly tasked with increasing liquidity and investment capital in three traditionally underserved markets: Rural Housing, Manufactured Housing, and Affordable Housing Preservation. Secondary housing market policy is and has historically been part of a system that is delivering vastly different outcomes for people depending on where they are born – and this inequity must be addressed. To that end, we were glad to see the revisions and improvements made to the Enterprises' Plans over the last year. But there is still much work to be done to unlock the potential of Duty to Serve, especially for Native American communities.

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## THE IMPORTANCE OF DUTY TO SERVE

As a strong advocate for the Duty to Serve requirements, HAC appreciates the time, effort, and resources FHFA, Fannie Mae, and Freddie Mac have devoted to developing and implementing their Underserved Market Plans.

The core of HAC's work for five decades has been rural and underserved communities. HAC understands the complexities and difficulties of working in these communities. HAC also understands the promise and possibility of Duty to Serve to affect real and measurable change in these long-overlooked places. Below are our beliefs with respect to the future of Duty to Serve:

**Racial and Geographic Equity Should Be Core to the Duty to Serve Mission.** Duty to Serve is a social justice issue. In an era in which combating racial and economic inequities is a national priority,<sup>1</sup> we can use Duty to Serve to go past minimum promised levels of loan purchase and to fundamentally shift the lives of Native, Black, Hispanic, and persistently poor families. If you are not part of a new solution, then you remain part of an old problem. These are not times for small thoughts and incremental action.

**Strong Partnerships are Essential to Duty to Serve's Success.** As part of their Plans, the Enterprises have been endeavoring to partner with existing housing providers including local, regional, and national nonprofits, tribes, and CDFIs that already work in rural communities. HAC strongly supports this approach and encourages the Enterprises to further maximize these strategic partnerships within their Duty to Serve efforts in rural communities. These entities have the experience, local trust, and insights to help Fannie Mae and Freddie Mac meet their duty in these often hard to reach areas.

**Rural America Is Ripe for Investment.** HAC's experience is that rural communities – even the most challenged – are largely credit-worthy and ripe for investment, provided that relationship-building and an understanding of rural nuances are in place. Rural America is not a monolith and is home to many different housing markets. To build on Duty to Serve's early successes, Fannie Mae and Freddie Mac will need to better understand these unique and often forgotten markets and commit meaningful efforts and investment.

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<sup>1</sup> "Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." January 20, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.



More Data can Enable Duty to Serve and Safety and Soundness to Complement One Another. For HAC and others to engage in education about and advocacy for Duty to Serve with rural communities and policymakers, more transparent evaluation methods and outcomes data need to be made available. FHFA should enhance the Duty to Serve disclosure by releasing scores and narrative assessments of Enterprise progress at the objective level. Such public disclosures would help both policymakers and the target markets understand the impact of Duty to Serve, and identify areas for expansion, improvement, and tailoring.

## NATIVE AMERICAN HOUSING FINANCE BACKGROUND

Housing finance in Native American communities has been a stunning example of both racial and geographic inequity at both the policy and private market levels for decades. Annually, mortgage originations have fluctuated with no consistent or appreciable increase on reservation land.<sup>2</sup> The shockingly small number in comparison to loan rates in other areas has led to the breakdown of the housing stock and severe new inventory limitations on most Indian Reservations.

Native American housing is a complex issue not only because of the rural nature of many reservations but also the unique land ownership rights. Reservation lands, depending on geographic, political and historic differences, can be owned in trust, be tribally held property, be allotted to individuals, or be purchased in a manner like non-tribal lands. Except in Oklahoma and certain parts of Alaska, in the case that someone defaults on their payments on a property, lenders can only claim the house, not the property it sits on. Using the home as collateral is common in the standard mortgage market, but for mortgages on tribal land, this system relies on lease hold mortgage lending not unlike what is used in land trusts across the country. However, unlike a land trust in an urban area, a lease hold mortgage on tribal trust land is governed by tribal authorities that vary in their land assignment and leasing process. Although uniformity is developing owing to reliance on the HUD Section 184 Indian Home Loan Guarantee Program, banks have generally not developed any significant volume of mortgage loans and therefore internal capacity on local tribal regulatory differences. It is common to hear banks characterize tribes as “complicated”. However, tribes could easily respond by lamenting that banks are not committed to tribal markets.

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<sup>2</sup> [HAC research explores the possibilities for improved mortgage finance on reservations - Housing Assistance Council \(ruralhome.org\)](https://www.ruralhome.org/hac-research-explores-the-possibilities-for-improved-mortgage-finance-on-reservations)



Because the loan volumes on tribal lands are so paltry, the housing industry specialists vital to the mortgage lending industry eco-system have yet to develop fully. The additional steps that lenders do not typically deal with in the standard mortgage market disincentivize financial institutions from working on tribal lands.<sup>3</sup> Many lenders have all too often chosen to simply not serve these investment-worthy markets. And as a result, tribal homebuyers and lenders must instead rely on the more cumbersome federal agency systems.

Due to disinvestment and lack of financing for upkeep and preservation, many homes in Native communities have fallen into disrepair. Thirty-four percent of Native Americans living on tribal land report at least one major problem in their home, compared to only 7 percent of households nationwide.<sup>4</sup> The poor condition of the housing stock has led many to doubling up in houses. Overcrowding is a major issue and puts an even larger strain on the existing housing stock. Because of the underdeveloped lending process for tribal land, tribes have limited access to capital to repair and preserve the existing housing stock.

In other areas, including some rural areas, renting and multifamily housing play key roles in the housing market. On tribal lands, though, 71 percent of the housing stock is single-family homes, and almost 16 percent is manufactured homes.<sup>5</sup> Multifamily units are limited. Although the Low-Income Housing Tax Credit (LIHTC) program has been successfully utilized by tribes – particularly in states that provide tribal set asides - not all states provide equal access to allocations and pricing for projects in rural areas are often not as competitive as in urban areas.

There have been federal programs that help incentivize and streamline the lending process for Native American communities and improve housing conditions. The Native American Housing Assistance and Self-Determination Act (NAHASDA) allowed tribes to determine how grants were used but program funding has stalled, and modernizations are needed. NAHASDA was – as heralded on the floor of the Senate during its debate – expected to lift the yoke of paternalism and finally make the American Dream of

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<sup>3</sup> [Rural Voices: Meeting Native American Housing Needs - Housing Assistance Council \(ruralhome.org\)](https://www.ruralhome.org/news/2017/05/16/rural-voices-meeting-native-american-housing-needs)

<sup>4</sup> HAC tabulations of the 2010 U.S. Census of Population or the American Community Survey 2005-2009 Five Year Estimates.

<sup>5</sup> Homeland, film directed by Jillian Spitzmiller and Hank Rogerson (Berkeley, California: University of California Extension, Center for Media and Independent Learning, 2000).



homeownership available to Native Americans.<sup>6</sup> Over 25 years later that dream remains just that for far too many American Indian people who need homes on their homelands.

USDA's Rural Development's Section 502 program and the Department of Veterans Affairs' direct loan program could help mitigate these negative effects but loan volume of these programs in tribal lands are even less than the HUD 184. Higher loan volume by each of these programs is needed to restore the current housing stock and replace the homes that have broken down completely.<sup>7</sup>

## THE ENTERPRISES' NATIVE AMERICAN HOUSING GOALS

**Fannie Mae.** The Fannie Mae Duty to Serve plan identifies Native American communities as having an especially vulnerable housing stock due to high rates of persistent poverty and historically low investment rates. The plan outlines three objectives to target Native American communities.

The first will provide technical assistance to 20 organizations working to develop or preserve housing for agricultural workers or Native American communities. Fannie Mae will rely on funding from USDA's Rural Development's Section 514 and 516 funding programs, U.S. Department of Housing and Urban Development (HUD) funding allocated for tribal housing, LIHTC, or state and local funding. Although most of the organizations served under this objective will be focused on agricultural workers, five to seven Native American housing projects will also be selected for intensive technical assistance throughout the year.

The second program will help improve mortgage access to Native homebuyers in Native communities. Fannie Mae will partner with CDFIs and tribal governments to effectively implement these mortgage programs. Trust lands have been an especially challenging ownership model for mortgage lenders. Aligning this new mortgage access expansion program with Fannie Mae's existing Native American Conventional Lending Initiative (NACLI) is intended to help the Enterprise more effectively serve Native American homebuyers on trust lands.

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<sup>6</sup> Castillo, D. (2019). Tribal Economic Resurgence: Reflections from a Tribal Economic Development Practitioner. In R. Miller, M. Jorgensen, & D. Stewart (Eds.), *Creating Private Sector Economies in Native America: Sustainable Development through Entrepreneurship* (pp. 111-128). Cambridge: Cambridge University Press.

<https://www.cambridge.org/core/books/abs/creating-private-sector-economies-in-native-america/tribal-economic-resurgence-reflections-from-a-tribal-economic-development-practitioner/31AAE1DDE8A8B9888BD9F9F6EFD4592D>.

<sup>7</sup> [Rural Voices: Meeting Native American Housing Needs - Housing Assistance Council \(ruralhome.org\)](https://www.ruralhome.org/)



Finally, Fannie Mae will expand its partnership with the Oweesta Corporation. This nonprofit was recently approved by HUD to act as a housing counseling intermediary and will support the educational needs of Native American consumers, promote housing stability, and increase the pipeline of mortgage-ready homebuyers. The group's goal will be to serve 800 households in 2022, 1,100 in 2023, and 1,200 in 2024.

**Freddie Mac.** Freddie Mac has also identified rural Native American communities as a particularly vulnerable housing market. Its Duty to Serve plan outlines one specific objective focused on Native American housing stock. Freddie Mac's goal is to purchase 15-50 loans in 2024. To do this, it will develop product enhancements in 2022-2023 to allow for the purchase of single-family loans in tribal areas.

Freddie Mac will also work to expand LIHTC to rural areas, including tribal lands. LIHTC is a highly competitive program and many tribal communities have not been able to obtain the tax credits because of this. Freddie Mac's program will target rural communities to expand LIHTC to markets that have not received them in the past.

## AREAS FOR IMPROVED NATIVE HOUSING WORK THROUGH DUTY TO SERVE

The primary question posed to this group is intriguing: what would a well-functioning housing market on tribal lands look like? The question seems to inquire about the degree to which Native Americans wishing to build or buy or sell a home on tribal trust lands would have the benefits of a complete housing market ecosystem. The components of such a system may include:

- Homebuyer education classes taught by certified instructors who are ideally Native American;
- Financial institutions with branches on or near tribal lands;
- Appraisal and inspection vendors as well as general contractors and subcontractors;
- Tribal realty departments that have taken full advantage of the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act<sup>8</sup>;
- A complete absence if not outlawing of storage shed vendors marketing and selling units for use on tribal lands as tiny, unsafe, unsanitary homes; and
- Financial products that are appropriate and useful for tribal trust lands offered by large lenders.

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<sup>8</sup> Public Law 112-151, July 30, 2012, <https://www.congress.gov/112/plaws/publ151/PLAW-112publ151.pdf>.



A well-functioning housing market on tribal lands would include all of those components and more.

One element is certainly additional federal policy – improvements to NAHASDA and tailoring of other federal housing programs to better serve Native communities. With respect to Duty to Serve specifically, a well-functioning housing market on tribal lands requires modern, reliable, and varied sources of financing. Native communities need equitable access to the types and volume of financial resources that are available outside tribal lands.

A well-functioning housing market on tribal lands would be one where Native Americans who are aspiring homeowners are seen and heard by the housing finance industry. Below are several suggestions for improvements to the Enterprises' current Duty to Serve plans for Native Communities. It should go without saying that all of these suggestions should be undertaken only with proactive tribal consultation.

**Allow GSE Equity Investments for Native CDFIs.** By far the highest leverage change that FHFA could make would be to finally adopt the plain language interpretation of the statute and permit the Enterprises to make targeted equity investments that support Duty to Serve. Targeted equity investments could make a tremendous difference in all three Duty to Serve markets, including in rural and Native communities.

Equity investments would allow CDFIs serving Native communities to strengthen their capital structures, leverage additional debt capital, and, as a result, increase lending and investing in their communities.

The equity investment tool is defined by the six attributes listed below, which differentiates this tool from simple subordinated debt.<sup>9</sup>

1. Carried as an investment on the investing institution's balance sheet in accordance with Generally Accepted Accounting Principles (GAAP).
2. It is a general obligation of the CDFI that is not secured by any of the CDFI's assets.
3. It is fully subordinated to the right of repayment of all of the CDFI's other creditors.

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<sup>9</sup> "EQ2: Equity Equivalent Investments." CDFI Fund. March 2002.  
<https://www.cdfifund.gov/sites/cdfi/files/documents/eq2-overview-by-opportunity-finance-network.pdf>.



4. It does not give the investor the right to accelerate payment unless the CDFI ceases its normal operations (i.e., changes its line of business).
5. It carries an interest rate that is not tied to any income received by the CDFI.
6. It has a rolling term and, therefore, an indeterminate maturity.

Designing products that bridge the mismatch between the Enterprise purchase box and the CDFI lending model has been a challenge – one that deserves continued work to accomplish. But CDFIs, and especially Native CDFIs, have built relationships with the borrowers and lending models and products that are tailored to their communities. A perfect example of Native CDFI creativity and innovation can be seen with the USDA Section 502 direct relending program, which was piloted in South Dakota in recent years.<sup>10</sup> USDA was failing to reach Native communities with their home mortgage products, and Native CDFIs stepped into that gap and became intermediary re-lenders for the Section 502 direct program, spending the time needed with their customers to get them prepared for homeownership and successfully through the application process for a Section 502 direct mortgage.

Similarly, if the Enterprises cannot lead in this arena, then they should follow and support those doing the work on the ground by making equity investments in CDFIs.

**Increase Purchase Goals for Mortgages on Native Lands.** Fannie Mae’s current Duty to Serve plan does not include any specific purchase goals for Native mortgages. Freddie Mac’s plan includes only modest purchase goals in 2024. While technical assistance is critical, setting and achieving ambitious purchase goals for Native mortgages should be core to the Duty to Serve work in rural Native communities.

**Establish Native Lending Teams at the Enterprises.** Much progress could be gained by establishing or reestablishing Native Lending Teams at both Enterprises. Such teams would add to the credibility of the Enterprises’ Duty to Serve work in Native communities. Without in-house expertise and cultural competency, progress in improving activity levels in Native communities will be slow at best.

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<sup>10</sup> 502 Direct Native CDFI Relending Pilot Program. South Dakota Native Homeownership Coalition. [https://www.sdnativehomeownershipcoalition.org/2019/wp-content/uploads/2020/03/502-Success-Report\\_v2.pdf](https://www.sdnativehomeownershipcoalition.org/2019/wp-content/uploads/2020/03/502-Success-Report_v2.pdf).





**Create Native-Tailored Mortgage Products.** Although the HUD Section 184 Indian Home Loan Guarantee Program is annually a half a billion-dollar business with less than a 1 percent default rate, the Enterprises have done little to offer any products to compete or provide a thoughtful alternative. One creative new product could be in the form of jumbo loans on tribal lands that have extended terms and that are multi-generational. Intergenerational households on tribal lands are common but they exist in overcrowded conditions. A right-sized home on tribal lands could benefit from larger loan limits where multiple individuals qualify for the loan jointly. Qualifying for a larger loan could allow families to right-size their home and secure a mortgage whose cost is more affordable to the extended family household than individual mortgages to separate households. We encourage the Enterprises to consider innovative new products, including the potential for intergenerational mortgage loans.

**Increase LIHTC Investment in Native Communities.** The LIHTC program is a critical tool in creating and preserving affordable housing in the U.S. But LIHTC credits often do not reach as impactfully into rural and Native communities. For example, in 2016, a project in Fargo, North Dakota, earned \$1.05 per dollar of credits, while a project on the Turtle Mountain reservation located in rural, north central North Dakota garnered a price of \$0.82 per dollar of credits. This is in contrast to the \$1.20 price that LIHTC credits are able to fetch in cities like San Francisco and New York.

As part of their Duty to Serve plans, the Enterprises have goals to invest in LIHTC equity in all rural areas. However, both Enterprises should also set a specific goal for LIHTC equity investments in Native communities, to ensure that the hardest to serve markets are truly being reached.

Thank you for the opportunity to speak at the FHFA's Duty to Serve Rural Listening Session and to submit these written comments. We look forward to continuing to work with you to ensure that the promise of Duty to Serve is realized in Native communities.

Sincerely,

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Native Community Capital  
HAC Board Member

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President & CEO  
Housing Assistance Council

