

Congress of the United States

Washington, DC 20510

November 3, 2023

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Secretary Yellen:

We write to urge the U.S. Department of Treasury (Treasury) to provide guidance clarifying that Fannie Mae and Freddie Mac, the Government Sponsored Enterprises (GSEs), are not considered tax-exempt controlled entities (TECEs). We believe this guidance would be consistent with existing federal law and congressional intent and would help promote affordable housing.

The GSEs are important rural Low-Income Housing Tax Credit (LIHTC) investors, commonly investing in rural affordable housing projects through multi-investor funds, through which several investors can jointly finance a project. Some investors that use LIHTC have raised concerns that Fannie Mae and Freddie Mac may be considered TECEs because of the federal government's conservatorship of them, a status which would make them unable to use the tax credit. A TECE's involvement in a multi-investor fund makes all the other fund investors ineligible for the tax benefits of LIHTC as well.

It is important that Treasury address this issue quickly. Uncertainty about the GSEs' tax status has led Fannie Mae to pull out of rural multi-investor funds for LIHTC projects. In July, Fannie Mae requested a modification to its 2023 Duty to Serve commitment, its legal obligation to invest in underserved markets, including rural housing, because of this uncertainty. While we encourage Fannie Mae to explore alternative approaches to continue investing in rural housing, we believe Treasury guidance is the clearest way to ensure these investments from both Fannie Mae and Freddie Mac. We believe Treasury can make this determination under current law.

Further, when Congress created TECE rules, they were not intended to address circumstances like the federal government's ownership stake in Fannie Mae and Freddie Mac. The TECE rules intended to prevent agreements between businesses and non-profits that may allow a tax-exempt entity to indirectly receive the benefits of a tax credit. For instance, a situation where a developer uses tax subsidies to construct a building, then leases it through a partnership to a non-profit for lower lease payments, effectively sharing the tax subsidies with a tax-exempt entity. This does not describe the current relationship between Treasury and Fannie Mae and Freddie Mac.

In conclusion, to support more affordable housing, Treasury should, consistent with the law and congressional intent, expeditiously issue written guidance to clarify that Fannie Mae and Freddie Mac are not TECEs.

We look forward to hearing from you on this matter soon.

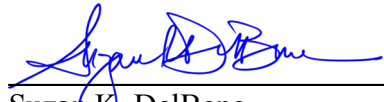
Sincerely,



Daniel T. Kildee
Member of Congress



Darin LaHood
Member of Congress



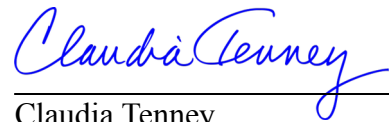
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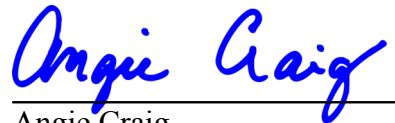
Sharice L. Davids
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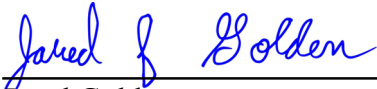
Zach Nunn
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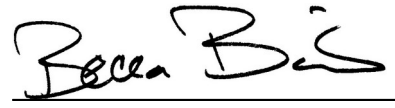
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