October 3, 2013

RE: US Department of Agriculture, Rural Housing Service, 7 CFR part 3550, RIN 0575-AC88
Single Family Housing Direct Loan Program

Dear People:

Fahe respectfully submits these comments to the United States Department of Agriculture, Rural Housing Service in response to the Proposed Rule issued August 23, 2013 regarding changes to the 502 Direct Single Family housing loan program, creating a certified loan application process.

Since 1980 Fahe, a regional Intermediary (non-profit) has been operating its core membership business with 53 members in five Central Appalachian States. We envision Appalachia as a place proud of sustaining its culture and environment, where growth, opportunity and hope are balanced so that all people fulfill their potential with regard to housing, employment, educational opportunity and quality of life. Fahe leads a network of Appalachian organizations to sustainable growth and measurable impact through collective voice and provides access to capital that creates housing and promotes community development.

The RHS currently operates two home ownership mortgage products, the 502 Direct and the 502 Guarantee; Fahe offers both of these products to its members and others in our service area. Fahe is a nationally approved lender in the Guarantee program. Fahe and its members have a long history of working with the Direct program. Some of our members have been packaging loans as far back as the late 1960's. The Direct loan is a tremendous home ownership program offering 33 -38 year terms, and 100% financing to rural low income families. In Rural America, Home Ownership reaches families below 50% of median on a regular basis and is a cost effective way to offer affordable housing to rural low income citizens. The average annual income of a Section 502 borrower is $27,000. This contrasts with the Section 502 Guarantee program, in which the average income of borrowers is $48,000. Over 60% of direct loan borrowers have incomes that do not exceed 60% of area median income. As a result, the families participating in Section 502 direct loans are the lowest income borrowers of any federal home ownership program. Despite serving the poorest homeowners in the federal system, the portfolio for Section 502 direct loans is in very good shape with a foreclosure rate of just over 4%.

Fahe is one of the five Intermediaries operating the USDA RHS Pilot program as described in the Proposed Rule. Fahe along with the four other Intermediaries worked with USDA RHS staff to create this public /private partnership. We believe the pilot has met with great success including the 8 states where Fahe offers the pilot. We have closed 131 loans this fiscal year (ytd) and have the capacity to expand. The Rural Housing Service/RD has lost over 1500 employees during the past 24 months. The current process for packaging, processing and closing a 502 direct loan is quite antiquated and requires a considerable amount of face to face contact with the applicants. This system contrasts greatly with current mortgage industry processing systems by failing to utilize technology developed for and by the industry to take advantage of easily made data transfers, i.e. loan application delivery and efficiencies in obtaining credit, appraisal and income data with respect to applicants. Indeed, USDA itself takes advantage of this modern technology in the operation of the 502 Guarantee Program but has not integrated these capabilities to the 502 Direct Program. The Unify System software is grossly outdated and to date unable to accommodate any modernization and the rules and procedures as outlined in the 3550 Handbook are seldom used by the rest of the industry. The Proposed rule is a good start to modernizing the 502 Direct packaging system and we applaud RHS for formally beginning this process and we look forward to working with RHS in continuance of the process.

In general we support all the proposed changes in the Proposed Rule and respectfully offer the following comments to ask for clarity, or offer improvements.

<u>Intermediaries</u>

1) The proposed rule states in the "Regulatory Impact Analysis Summary" (page 52460) *<u>…"is highly beneficial from a salaries and a time savings standpoint as well as from a marketing and transportation and standpoint. Implementing this proposed rule will save the Agency approximately $1.5 million in salaries and expenses per fiscal year in comparison to maintaining the status quo</u>*." In other words the pilot has shown the benefit of this public / private partnership potentially saving the federal government $1.5 million per year, delivering a critical affordable housing program in rural areas across the country, in fact to some of the poorest counties in America. In Section I, Background (pages 52461-52462) "…*<u>Under this pilot, the Agency observed that the use of loan application packagers who have successfully completed an Agency-approved packaging course and who submit loan packages through an intermediary can shorten the Agency's processing time of loan applications (…) by approximately 34 percent."…</u>*

    a. For the above reasons we urge the RHS to **<u>continue</u>** to include access to Agency "funding priorities" (formerly known as the "NORF") for loans coming through an intermediary as this has been a critical factor to the success of the pilot. In addition we believe loans coming through an intermediary should receive <u>priority processing</u> by Agency/RD staff. We want to emphasize at this point the following factors/reasons to include access to funding priorities and priority processing.

        i. reduction in Agency/RD staff across the country (over 1500 persons)
        ii. the outdated underwriting process with 502 Direct
        iii. 34% reduction in processing time
        iv. $1.5 million in savings

2) The role of intermediary is intricate to the Agency receiving high quality application packages which directly reduces the Agency staff time necessary to review an application, gather documentation, inspect properties/land, order credit reports, etc. The Agency retains the decision making authority underwriting and approving loans (as it does in the Guarantee process which is typical of the rest of the Mortgage industry).

3) We support the requirement of Intermediary staff completing a 3-day Agency approved course and online testing. We believe the training/course should include additional materials specific to the roles and responsibilities of the Intermediary.

4) We are attaching a letter sent to then RHS Administrator Treviño, dated 2/28/13 with criteria the five intermediaries developed for potential new intermediaries. This same letter also includes seven suggested improvements to the expedited processing system.

5) Intermediary Coverage Area; Fahe proposes the Intermediary geographic boundaries, or service areas for operations involving packaging should only be limited by the intermediaries ability to best serve its primary and secondary customers. The Agency, Packagers, and 502 Direct Borrowers.

6) Mutual Self-Help; Fahe proposes that mutual Self-Help 502 Direct packages be eligible for the Intermediary process. No additional fees would be assessed to the borrower or the Agency. If the Intermediary packaging process can expedite the Agency review and approval of the Mutual Self-Help Borrower the Self-Help Borrower should not be penalized from participating in the process. Fees for the packaging would be negotiated by the Self-Help Provider and the Intermediary and covered by non-Agency, non-borrower funds.

7) Packaging Fees; Fahe proposes packaging fees similar to industry standards. Mortgage lenders and brokers traditionally are earning a minimum of 250 basis points in originating private sector mortgages. A fee of similar amount would incentivize the Packagers and Intermediaries to participate as well as provide sufficient resources for the participants to maintain compliance with the myriad requirements imposed upon them by this rule. In particular the requirements of the SAFE Act place extreme regulatory burdens upon non-profits that generally are otherwise exempt from the SAFE Act in their non-USDA activities. An average cost of $3000-$5000 in initial costs is generally associated with becoming SAFE Act compliant and annual requirements for licensing renewal, bonding and continuing education are in the $1000-$2000 range.

Agency Approved Loan Application Packaging Course and Testing

1) Fahe applauds the leadership and tremendous forethought provided by RCAC, HAC, and NWA *along with the Agency* for their work in developing and hosting the 3-day 502 courses. Over 500 people have successfully taken the 3-day course and passed the online test. NWA has a complete list of every participant, the dates and location of the course, and the test score. We strongly urge the agency to approve these participants who have successfully completed the 3-day course and passed the online test as "***Agency Certified Loan Packagers".***

Agency-certified Loan Application Packagers and Qualified Employers

1) This proposed rule as written requires that employers and packagers must be in compliance with the SAFE Act of 2008. We believe that this requirement is overwhelmingly burdensome on most, if not all, Employers and Packagers. As stated above the costs associated with this compliance are significant. Additionally, we believe that process of packaging loans through an Intermediary for delivery to USDA, is not, in and of itself, subject to the requirements of the SAFE Act. In fact, Fahe underwent an audit by the West Virginia Division of Financial Institutions and they made just that determination. Additionally we have participated in preliminary discussions with the Tennessee Department of Financial Institutions with the hope of obtaining a similar ruling.

2) While we understand that USDA does not retain authority over the SAFE Act it is certainly within the authority of USDA to NOT require that loan packagers and Qualified Employers to be SAFE Act compliant and we believe that the proper approach is to not require such compliance. Loan packaging as comprised by these rules falls far short of actual loan origination as defined by the SAFE Act in a number of important ways that, in our opinion, should allow USDA to not require that loan application packagers and Qualified Employers to be SAFE Act compliant. Notable distinctions from loan packagers and SAFE Act mortgage loan originators are:

- Loan packagers do not set or negotiate rates and fees in the 502 Direct process
- Loan packagers do not have loan approval authority in the 502 Direct process
- USDA Staff provide all required preliminary disclosures to satisfy RESPA, TIL, ECOA, etc.
- USDA Staff control the process of hiring and obtaining the property appraisal
- USDA Staff control the process of obtaining the title search and scheduling the loan closing with the title agent

3) HUD recognized a legitimate Non-profit exemption from the SAFE Act that by all measures is consistent with the operation of the Loan Packaging initiative, the terms and conditions of the financing offered to low-income applicants and the nature of the Non-profit organizations that are expected to become certified loan application packagers and Qualified Employers. To wit:

From the Final Rule: **Federal Register** / Vol. 76, No. 126 / Thursday, June 30, 2011 / Rules and Regulations

The SAFE Act does not cover employees of bona fide nonprofit organizations who act as loan originators with respect to residential mortgage loans outside a commercial context.

Individuals who act as loan originators with respect to certain kinds of loans as employees of ‘‘bona fide’’ nonprofit organizations, as defined by this final rule, are not subject to the licensing and registration requirements of the SAFE Act. Under the circumstances defined in this final rule, such individuals are similar to government employees who act as loan originators pursuant to government funded and regulated housing assistance programs, in that employees of a bona fide nonprofit organization who act as loan originators do so for public or charitable purposes, and not for the profit of another individual or entity. Employees of bona fide nonprofit organizations who act as loan originators do not act in a commercial context and consequently are not covered by the SAFE Act. HUD recognizes that the mere fact of an organization’s 501(c)(3) status is insufficient to conclude that its employees who act as loan originators necessarily do so for the benefit of the borrower and for public or charitable purposes, rather than for the profit of the organization or another entity or individual. Instead, the organization’s activities, purpose, incentive structures, and loan products must be considered in order to determine that its employees who act as loan originators do so outside of a commercial context. Accordingly, this final rule provides that an organization is considered to be a ‘‘bona fide’’ nonprofit organization if the organization demonstrates to the satisfaction of the applicable regulator that the organization:

(1) Maintains tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986;
(2) Promotes affordable housing or provides homeownership education, or similar services;
(3) Conducts its activities in a manner that serves public or charitable purposes;
(4) Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients;
(5) Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients;
(6) Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and
(7) Meets such other standards that the state determines appropriate. With respect to whether particular mortgage terms are favorable to borrowers, the applicable regulator should examine the interest rate that the home loan would carry; the charges that are imposed on the borrower for origination, application, closing and other costs; whether the mortgage includes any predatory characteristics; the borrower’s ability to repay the loan; and the term of the mortgage. Finally, to ensure that all of the individual’s actions in the course of acting as a loan originator are subject to the control of the bona fide nonprofit organization and are consistent with the organization’s mission and practices.

INTERMEDIARIES SHOULD BE SAFE ACT COMPLIANT

Fahe does believe that it is reasonable that any and all selected Intermediaries should be SAFE Act compliant in the states in which they propose to conduct operations within the scope of the Loan Packaging initiative. Given the complexities of the regulations, and Fahe's belief that Loan Packagers and Qualified Employers should enjoy an exemption from the SAFE Act, we believe the Agency should supply the Intermediaries evidence of compliance with the Final Rule of the SAFE Act.

USDA ACCEPTANCE OF INTERMEDIARY-SUPPLIED CREDIT REPORTS AND APPRAISALS

USDA, in the proposed rules, specifically acknowledges the significant impact that Loan Packagers and the process itself have demonstrated in saving Agency staff resources by providing high quality loan packages. Fahe believes that this impact could be taken to even higher levels if the Agency would accept credit reports that the Intermediaries obtain and submit. Fahe, for example, operates as a lender in the Guaranteed program and is able to obtain Agency-compliant credit reports to include public records check, anti-fraud tools and OFAC scans among other components. These reports are obtained by Fahe at significantly less than the cost of Agency-obtained reports and in much less time. Generally Agency reports cost $34 per applicant and take approximately 7 days to obtain. Through modern software and interfaces with the credit reporting agencies Fahe can obtain literally THE EXACT same credit report in 30 seconds for a cost of $12.20 per person. We believe that introducing the concept of the Intermediary submitting the credit report with the loan package could be a major source of efficiency added to the process.

Again, Fahe, as a lender operating in the USDA Guaranteed program, regularly and customarily orders, obtains and evaluates property appraisals that are Agency-compliant, specifically that are compliant to HUD 4150.2 and 4905.1 regulations. Again, through software and industry efficiencies in ordering appraisals, we are of the belief that we could save an additional seven days if allowed to order appraisals in the Loan Packaging initiative directly from HUD/USDA- approved appraisers. As a licensed lender we have responsibilities to the concepts of USPAP, HUD and the Interagency Appraisal and Evaluation Guidelines of Dec. 23, 2010 as put forth by FDIC, OTS, FRB, OCC and NCUA.

Fahe thanks the Agency for the opportunity to offer these comments.

James King

Jim King
President & CEO

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February 28, 2013

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Re: Qualifications of 502 Loan Packaging Intermediaries

Dear Ms. Treviño,

At the HAC Conference in December 2012, you asked for input in designing the criteria to be used for evaluating potential intermediaries as part of RD's plan to expand the 502 packaging pilot model for all 502 Direct loans processed.

We believe that financial strength of the intermediary, understanding of lending, and experience with USDA and the 502 program should be the primary considerations; and we recommend that USDA design the processing structure to allow an intermediary to process in volume in order to make the assignment financially feasible for the intermediary (and thereby providing incentive for a job well done). More specifically, we would like to recommend the following criteria for new intermediaries. Existing intermediaries would automatically be eligible unless there were performance issues:

NEW Intermediary Criteria:
Strength of organization

- 501 (c) 3 nonprofit per federal regulations
- Financially viable with at least 3 years strong financial performance (positive net income averaged over a 3 year period), and exhibit balance sheet growth evidenced by an independent audit with no significant findings in the past 3 years.

Experience with lending and USDA 502 loans

- CDFI active at least 10 years in housing finance, lending, and development,
- 5 years 502 Direct Loan program experience.
- Current relationships with RD offices
- At least one recommendation from an RD State Office
- Demonstrate a relationship with a network of potential packaging organizations
- Staff experienced (minimum 5 Years) in packaging, underwriting, or processing Section 502 Direct; and staff has completed and passed the 502 Packaging/Direct Loan Course as approved by USDA.
- Ability to teach, train and provide quality control to third party loan packagers

Ability to process a high volume of loans in a timely fashion

- Capacity to review 800 or more loan packages per year; and able to provide package reviews in a timely fashion (within 3 working days of receipt).A minimum of five and no more than 15 intermediaries covering multi-state regions to keep the program manageable, efficient and profitable.
- All third party packaged loans should go through the intermediaries to ensure an arms-length transaction and quality

We feel that these qualifications will position the expansion of the packaging pilot to be successful in meeting the goals you outlined in December and we welcome the opportunity to discuss this with you further. We also welcome the opportunity to discuss changes and modifications to the packaging and approval process that would greatly increase productivity.

We have also taken this opportunity to provide a list of recommendations for the packaging based on our experience with the pilot. We would welcome the opportunity to meet and discuss our ideas.

Thank you for the opportunity to work with you as partners in serving our rural communities.

Sincerely,

Jim King, CEO
FAHE

Stan Keasling, CEO
RCAC

Marcia Erickson, CEO
Grow South Dakota

Joy McCracken, Executive Director
NeighborWorks Dakota Home Resources

Nick Mitchell, President of the Board
Texas Association of Community Development Corporations

Additional program modifications that would improve 502 packaging and processing:

1. Allow intermediaries the ability to order appraisals. Intermediaries have the experience as lenders to manage this process.

2. Eliminate the RMCR and pull tri-merge credit reports. The RMCR is an investigative credit report that was used by the mortgage industry in the ‘80s and early ‘90s when data wasn’t so readily available and transferrable. It typically takes USDA as much as 10 days to get one and they cost $32. Tri-Merge reports can be can be pulled in house in seconds and costs $12.20 for one person. These have become the standard for every lender in the country.
3. Eliminate most of the field inspections done by USDA staff. Some states are doing this on an experimental basis. Reserve the right to go see any property that either the home inspection report or the appraisal does not make clear is approvable but generally stop doing the inspections and rely on the appraisal and/or a home inspection.
4. Allow access to UNIFI by the intermediaries and/or packagers.
5. Provide clarity and/or immunity under the Safe Act and other new consumer protection laws that are giving packagers concern for liability.
6. Have RD pay all or a portion of the packaging fee so the burden does not fall on the applicant. The third party packaging program will save USDA money which could partially be passed on to the borrower.
7. Provide Technical Assistance funding to intermediaries/packagers for pre qualifications that are not eligible or choose not to complete or are ineligible for the packaging/loan. Funding could also be used for education/training/marketing.

Without these changes, increased communication is essential between the USDA area office and the intermediaries at certain stages of the process, namely at approval or commitment of funds, when the appraisal is back and share that appraisal with us and when title is ordered and the closing scheduled.

In addition we recommend an additional component of the three day packager’s training on how the interaction process with the intermediary will work.