



Housing Assistance Council

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September 18, 2009

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA27
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington DC 20552

Re: Duty to Serve Underserved Markets for Enterprises; Proposed Rule. 12 CFR Part 1282, RIN 2590-AA27

Dear Mr. Pollard:

The Housing Assistance Council (HAC) respectfully submits the following comments on the notice of the Duty To Serve Underserved Markets for Enterprises; Proposed Rule. 12 CFR Part 1282, RIN 2590-AA27. HAC is a national nonprofit organization that supports affordable housing efforts in rural areas of the United States.

The Advance Notice of Proposed Rulemaking (ANPR) is seeking comments to establish a duty for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises) to serve underserved markets. Specifically, the Enterprises were tasked to address three specific underserved markets -- manufactured housing, affordable housing preservation, and rural areas--in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing in those markets.

The Housing Assistance Council has been helping local organizations build affordable homes in rural America since 1971. HAC emphasizes local solutions, empowerment of the poor, reduced dependence, and self-help strategies. HAC assists in the development of both single- and multi-family homes and promotes homeownership for low-income rural families. With nearly 40 years of service to public, nonprofit, and private organizations throughout the rural United States, the Housing Assistance Council is uniquely positioned to provide comments and insights on all three of the underserved areas identified in this Notice.

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I. RURAL MARKET

Definition of “Rural Areas”

The question of “What is Rural?” confuses, perplexes, and confounds nearly everyone who works in rural areas or with rural populations of the United States. Establishing a universal definition of rural poses many challenges. In general, rural areas share the common characteristics of comparatively few people living in an area, limited access to large cities and considerable traveling distances to “market areas” for work and everyday-living activities. But rurality, like most other things in society, exists along a continuum and varies extensively based on proximity to a central place, community size, population density, total population, and various social and economic factors.

The Notice presents three potential definitions for consideration that would classify “Rural Areas” under the duty to serve regulations, 1) Census, Urban-Rural definition, 2) USDA Rural-Urban Continuum Codes (RUC), 3) A combination of Census Defined Urbanized Areas and Urban Clusters along with USDA’s Rural-Urban Commuting (RUCA) Codes.

In our view, several of the potential rural definitions put forth require additional information and clarification to be adequately assessed as an appropriate definition. For example, in the Notice the proposed second definition, (USDA Rural Urban Continuum Code (RUC)) states:

The second definition would define “rural areas” as all counties assigned a U.S. Department of Agriculture (USDA) Rural-Urban Continuum code (RUC code), which the USDA uses to classify rural areas.

Under USDA’s RUC coding system, each county in the U.S, urban or rural, receives a code from 0 to 9. The Notice fails to identify which codes would indicate rural counties. HAC assumes that a more clearly identified definition would include a USDA RUC of four (4) or higher (denoting Nonmetropolitan counties) but without specific language we are unable to assess this definition.

HAC agrees with the Federal Housing Finance Agency that county-based designations are not the optimum criteria on which to base a rural definition. Large counties, particularly in the Western United States, may dilute or mask rural population given their geographic size and influence. The Office of Management and Budget’s (OMB’s) Metropolitan and Micropolitan Statistical Areas definition uses counties as its primary unit of geography. However, given changes to OMB’s classification system, Nonmetropolitan counties (Micropolitan and Outside Core Based Areas) are not as good a proxy for rural areas as they once were. For example, more than half of the Census-defined rural population now reside in Metropolitan areas.

Similar to the second definition of rural, HAC is seeking additional clarification on the concepts put forth in the third definition. This classification incorporates a combination of

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Census Defined Urbanized Areas and Urban Clusters along with USDA's Rural-Urban Commuting (RUCA) Codes. Specifically the Notice presents this definition:

Under this two-pronged definition, all census tracts designated by the U.S. Census Bureau as "nonmetropolitan" would be considered rural areas, as would all census tracts outside of urbanized areas and urban clusters, as designated by USDA's Rural-Urban Commuting Area code (RUCA code).

HAC agrees that a more refined (sub-county) definition of rural is preferable, but we are unclear as to the compatibility of concepts with the third definition as presented in the Notice. It is our understanding that as of 2000, Census defined "Urbanized Areas" and "Urban Clusters" do not conform to standard political and jurisdictional boundaries such as counties, cities, and tracts. Therefore, Census tracts can include territory with and without Urbanized Areas and Urban Clusters. This concept is viable, but as stated it would exclude a tract if only a small portion of the tract also included an Urbanized Area or Urban Cluster.

For programmatic purposes, such as a rural definition for Duty to Serve, the Housing Assistance Council has consistently recommended USDA's Rural Development (RD) definition of eligible areas for the affordable housing and community development programs that the agency administers. USDA's eligible areas definition generally includes open country or rural towns with no more 20,000 in population. A detailed definition of USDA RD eligible areas is presented below:

"Rural" and "rural area" mean any open country, or any place, town, village, or city which is not part of or associated with an urban area and which (1) has a population not in excess of 2,500 inhabitants, or (2) has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or (3) has a population in excess of 10,000 but not in excess of 20,000, and (A) is not contained within a standard metropolitan statistical area, and (B) has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretaries of Agriculture and HUD. For purposes of this subchapter, any area classified as "rural" or a "rural area" prior to October 1, 1990, and determined not to be "rural" or a "rural area" as a result of data received from or after the 1990 or 2000 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2010, if such area has a population in excess of 10,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families.(42 USC 1490).

The USDA RD definition of rural is not based on county or tract boundaries, and therefore often provides a more precise indicator of rural territory and population. Additionally, this definition is familiar to rural housing practitioners and policy makers as it has been the basis of USDA's affordable housing programs and efforts for decades. It should be noted that the USDA definition is not without its own drawbacks. Like the Census defined Urban-Rural definition, USDA's classification system does not conform to standard political or jurisdictional geographies. As such, USDA eligible areas may not be as easy to

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identify as more standard units of geography. However, USDA RD has provided an on-line resource that easily identifies USDA RD eligible areas by location or address. Maps and the on-line lookup service for RD eligible areas definition can be accessed at USDA RD's website, <http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do>

While there is no perfect definition of rural, HAC believes that USDA's eligible areas classification is the best programmatic definition of rural and should be adopted as the rural definition for duty to serve. In addition, HAC recommends that all federally designated tribal areas within USDA eligible areas be specifically included within the duty to serve rural areas definition.

[See Attached Map of USDA Eligible Areas]

Private Sector Initiatives for Rural Housing

One bright spot in the current housing situation are the efforts of nonprofit housing organizations who continue to meet the housing need of low-income residents. Across the nation there are up to 1,000 local housing nonprofits working in rural communities. Some nonprofits administer statewide or even regional development plans while others serve a single community. In many instances, these local nonprofit organizations are the only entities providing affordable housing for low-income people in their communities. Such organizations have helped low-income families become successful homeowner and have developed affordable rental units.

HAC recommends that the Enterprises receive additional credit toward duty to serve requirements for financial and programmatic support of private nonprofit organizations working in rural communities.

II. MANUFACTURED HOUSING

Manufactured homes are an important source of housing, especially in rural areas. Nationwide, approximately 7 percent of occupied housing units are mobile or manufactured homes. In rural areas the prevalence of manufactured housing is more than twice the national rate, as manufactured homes make up 18 percent of rural homes.

Personal Property Loans for Manufactured Housing

While many physical and structural attributes of manufactured housing have improved, issues related to financing and the investment value of this type of housing have not progressed as well. For manufactured home residents who do not own their homes outright, financing generally falls within one of two major types, personal property or mortgage financing. Personal property, or "chattel," loans are generally used when the manufactured home is purchased separately from the site. These personal property loans generally involve lower down payment costs. However, this loan type typically carries a higher interest rate and shorter term than a conventional real estate mortgage.

The dominance of personal property or “chattel” lending within manufactured housing finance mechanisms continues to hinder this type of housing, as well as the residents who reside in manufactured homes. The Housing Assistance Council recommends that the Enterprises not purchase or underwrite personal property (chattel) loans for manufactured homes under the duty to serve requirements. It is our firm belief that applicants should be provided opportunities to obtain standard mortgage loans instead of personal property financing, so often used to purchase manufactured homes. Specifically, HAC recommends that all manufactured home loans underwritten by the Enterprises conform to requirements of FHA Title II mortgage insurance. Some of the general requirements of the Title II Insurance include:

- Have a floor area of not less than 400 square feet;
- Be constructed after June 15, 1976, in conformance with the Federal manufactured home construction and safety standards, as evidenced by an affixed certification label in accordance with 24 CFR Section 3280.8;
- Be classified and subject to taxation as real estate;
- Be built and remains on a permanent chassis;
- Be designed to be used as a dwelling with a permanent foundation built to FHA criteria.

HAC strongly recommends that manufactured homes be financed exclusively as real estate loans under the duty to serve provisions. However, we also understand that these lending criteria may be limiting considering the current economic and finance environment. At a minimum the Enterprises should not underwrite manufactured home financing that is considered “high cost.” What exactly constitutes a high-cost loan is often difficult to define, but one suggestion is to incorporate the definition of high cost loans utilized in Home Mortgage Disclosure Act (HMDA) reporting. HMDA generally classifies a high cost loan as:

- For a first lien loan, the annual percentage rate (APR) exceeds by more than three (3) percentage points the rates on Treasury securities of comparable maturity; or
- For a second lien loan, the annual percentage rate (APR) exceeds by more than five (5) percentage points the rates on Treasury securities of comparable maturity.

Under no circumstances should the Enterprises purchase manufactured home loans that are predatory in nature, such as those that charge more in interest and fees than covers the associated risk, contain abusive terms and conditions, do not take into account the borrower's ability to repay, and/or target women, minorities, and communities of color.

Manufactured Home Parks

Land-lease manufactured home communities are an important source of housing and community for over 2.6 million households. While manufactured home communities are an integral aspect of many communities' housing stock, residents of parks often encounter problems such as excessive rent increases, poor park management and maintenance, restrictive rules, and restricted access to municipal services. Furthermore, owners of manufactured homes in parks are vulnerable and often lack recourse when problems arise because moving their unit may be prohibitively expensive.

A major development within manufactured housing communities is the dramatic increase in the number of manufactured home community closures. In many instances, such closures are driven by increasing land values where higher rents or incomes from the sale of land can be commanded. Parks are also closing in declining or unprofitable housing markets due to a lack of revenue or viability. Whatever the cause, closures of manufactured home communities have hit epidemic levels in some areas. Exacerbating the rapid nature of closures are weak legal protections for tenants and prohibitively expensive relocation and moving costs. The combination of these factors is threatening an already vulnerable population residing in one of few affordable housing resources in this nation.

One proven strategy in stabilizing and improving manufactured home communities is the process of conversion to resident or nonprofit ownership. The Housing Assistance Council recommends that loans and financing from the Enterprises in support resident or nonprofit owned communities receive extra credit under duty to serve requirements.

III. AFFORDABLE HOUSING PRESERVATION

Since the mid-1930s, the federal government has supported the production of low- and moderate-income housing in rural areas. One especially important resource in rural America is USDA's Section 515 Rural Rental Housing program. Section 515 has been the mainstay of the agency's efforts to serve the poorest of the rural poor for the past 45 years. The Section 515 program provides mortgage loans to develop rental housing for very low-, low- and moderate-income households. However, like many other sources of affordable rental housing Section 515 units are increasingly at risk of loss due to prepayment.

The rural preservation landscape has changed significantly in recent years. USDA has implemented a Multi-Family Preservation and Revitalization (MPR) program for its Section 515 Rural Rental Housing Program. New regulations for Section 515 prepayment took effect in February 2005. A stream of court decisions, studies, and recommendations for change have been published, and legislation has been introduced in Congress. The major Housing and Economic Recovery Act that became law in July 2008 included changes related to the preservation of Section 515 properties using Low Income Housing Tax Credits.

The ANPR asks how to serve, in meaningful and measurable ways, the preservation of affordable housing developed through a variety of federal programs. HAC recommends including Section 538 of the Housing Act of 1949 on the list of programs. Section 538 enables USDA to guarantee private lenders' loans for rental housing in rural areas that is affordable for low- and moderate-income tenants. The Enterprises should be encouraged to purchase these loans, supporting this housing through provision of a secondary market.

USDA's Section 515 and Section 514 loans cannot be supported in the same way because these loans are made directly by USDA, which holds them in its portfolio. Section 515 loans support housing for low- and very low-income rural renters, while Section 514 loans are used for housing for low- and very low-income farmworkers (along with Section 516 grants). The Enterprises can assist these programs by purchasing loans that are used in conjunction with Section 515 and 514 financing, such as Low Income Housing Tax Credits. Finally, Section 514 loans should be added to the list of federal programs that subsidize affordable rental housing.

In addition to these program specific comments, HAC recommends the Enterprises incorporate the following general activities to facilitate the preservation of affordable rental housing particularly in rural communities.

- Facilitate transfers of properties to owners that commit to keeping them decent, safe, sanitary, and affordable for long-term occupancy by low- and very low-income households.
- Identify special strategies to preserve small properties in remote areas.
- Protect tenants against displacement, ensure that their homes remain decent, safe, sanitary, and affordable, and ensure that the housing is managed in a manner that protects their interests.

FHFA also asks whether Enterprise assistance in connection with the Neighborhood Stabilization Program should be considered as service to the affordable housing preservation market, and asks about state and local programs including foreclosure prevention programs. While HAC fully supports Enterprise involvement in foreclosure prevention and recovery efforts, HAC believes the duty to serve should apply to preservation of rental housing only, not to preservation of homeownership housing.

IV. EVALUATION OF PERFORMANCE

Grants Test

As indicated earlier in our comments, the role and importance of nonprofit affordable housing organizations is integral to the provision of affordable housing in rural communities. These local nonprofits are all too often the only local organizations providing affordable housing for low-income people in rural areas.

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Rural Housing developers often face difficult problems that may not be as prevalent in urban areas. Inadequate or non-existent water and sewer systems, a lack of financial institutions, and limited access to labor markets and construction material can hinder the development of affordable housing in rural areas. Despite these limitations, community based organizations are the essential connections that transform public and private funding into affordable homes.

The Enterprises could make an important contribution to these often under-resourced organizations through capacity building grants for rural nonprofits.

Sizing the Market

Accessing quality data from which to formulate policy has been a persistent problem for rural areas and populations. The relatively small and dispersed population of rural communities sometimes hinders or makes standard statistical data collection methods cost prohibitive. As a result, data for rural areas are all too often omitted from federally collected surveys or analyses. This lack of investigation is evident in the assessment of rural mortgage markets. A perfect example of the data shortcomings for rural communities can be witnessed in the Home Mortgage Disclosure Act (HMDA). HMDA data are a critical resource to understanding lending trends. However, for rural areas there are severe limitations to these data. Only depository institutions with assets of \$37 million or more that are headquartered in a metropolitan area were required to report lending activity under HMDA in 2005. Consequently, an undetermined number of rural lending data are not available as many small, rural financial institutions are not required to report lending information.

Through the duty to serve requirements, the Federal Housing Finance Agency (FHFA) should mandate frequent and easily available mortgage market data at the local community level for the entire nation including rural areas. Additionally, the Home Mortgage Disclosure Act (HMDA) should be amended to include reporting for *all* mortgage lending institutions and rural communities.

HAC is pleased to have this opportunity to comment on the Notice for Duty to Serve Underserved Markets. Please do not hesitate to contact me if you need additional information or clarification of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Moises Loza', with a long horizontal flourish extending to the right.

Moises Loza
Executive Director