



Housing Assistance Council

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July 22, 2010

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 comments on the notice of the Duty to Serve Underserved Markets for Enterprises; Proposed Rule. 12 CFR Part 1282, RIN 2590-AA27. These remarks are a follow-up to our comments submitted on September 18th, 2009 for the Advanced Notice. The Housing Assistance Council is a national nonprofit organization that supports affordable housing efforts in rural areas of the United States.

The Notice of Proposed Rulemaking seeks 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 are 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.

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I. RURAL MARKET

Definition of “Rural Areas”

The Housing Assistance Council applauds FHFA’s proposal to adopt USDA’s Rural Development (RD) definition of eligible areas as the primary definition of rural areas in duty to serve activities. As FHFA rightly notes, the USDA definition provides more precision, and is less confusing than most of the proposed rural definitions in the initial advanced notice. In addition, this definition is familiar to rural housing practitioners and policy makers, and has been a central component of affordable housing programs and efforts in rural areas for decades.

The proposed Notice indicates some concerns about identifying and coding USDA eligible areas for multiple properties on a flow basis. Currently, the only publically available system for determining USDA eligible areas is located at USDA’s website, where entries must be submitted manually and individually. HAC recommends that FHFA contact USDA RD and request the underlying geodata (shapefiles) detailing USDA eligible areas information. These data could then be passed on to the Enterprises for the development of their own geographic indicator system that can be customized to meet the Enterprise’s needs.

The Notice also requests further comments on whether tribal lands and colonias should automatically be included in the definition of any “rural area” adopted under duty to serve. Since our inception, the Housing Assistance Council has devoted particular attention and resources to high need rural areas including Native American lands and colonias. HAC generally believes that tribal areas and colonias should be targeted by the Enterprises within the scope of duty to serve because many of their residents have low or very-low incomes. It is likely that some tribal lands and colonias are located outside USDA RD eligible areas. However, it is our belief that the USDA eligible areas definition is generally broad enough to include high need areas that are rural in nature. Therefore HAC suggests that tribal lands and colonias not be automatically classified as “rural” under duty to serve.

The Notice further inquires on “how to define colonias.” The Housing Assistance Council recommends FHFA contact the U.S. Department of Housing and Urban Development’s (HUD’s) Office of SW Border, Colonias, Migrant/Farmworkers. This division recently undertook an effort to identify and geocode all colonias along the Southwest border. Additionally, the Attorney General for the State of Texas maintains a listing of colonias in Texas. The listing may be accessed from the Attorney General’s website at https://maps.oag.state.tx.us/colgeog/colgeog_online.html#.

Nonprofit Housing Organizations in Rural Areas

Within the scope of rural markets, the Housing Assistance Council wishes to reiterate the importance of nonprofit housing organizations to the provision of affordable housing in rural communities. These local nonprofits are often the only local organizations providing affordable housing for low-income people in rural areas. Rural housing developers face challenges 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.

II. AFFORDABLE HOUSING PRESERVATION

Eligible Housing Programs

Section 1282.33(b) of the proposed rule limits eligible preservation activities to housing projects that have financing from any of the programs specifically listed. While HAC agrees that the programs on the list are appropriately included, it believes that the list should be more flexible. For example, the list does not include USDA's Section 538 program although, as the proposed rule notes on page 32107, Section 538 is a major tool in efforts to preserve USDA multifamily housing. Nor does it include USDA's Multi-Family Preservation and Revitalization Program (MPR), which is also essential in many rural preservation efforts. Finally, if additional programs are created or funded in the future, such as the National Housing Trust Fund; FHFA would need to undertake a new rulemaking process to amend the list.

For these reasons, HAC suggests that FHFA not try to create an all-inclusive list of programs that might provide funding for preservation, and instead adopt the approach it takes with respect to listing rural housing programs: "for purposes of the duty to serve, it is not necessary that FHFA specifically determine the eligibility of individual federal, state or local programs that support rural housing" (page 32109). Similarly, FHFA need not determine the eligibility of individual programs that support affordable housing in other geographic areas. Any program should be eligible so long as the housing involved is affordable to very low-, low-, and moderate-income households.

Maturing Loans

HAC suggests striking the sentence in the proposed rule (page 32106) stating that "FHFA will pay particular attention to the volume of existing loans that are maturing." This language may encourage lenders to give inappropriate priority to properties with maturing loans rather than those with loans that are being prepaid or refinanced during the loan term. The status of a loan is not as important as a community's need for a

particular housing development. In fact, USDA's preservation funding is most often used for properties whose mortgages are not yet maturing.

Section 515 Assistance

On page 32106 the proposed rule says the Enterprises may require additional time to develop financing and other assistance for Section 515 (and a number of other programs). On page 32107, however, the proposed rule states that "both Enterprises currently have programs to help owners" of Section 515 properties. HAC hopes the final rule will clarify this conflicting language.

Section 514 Assistance

In its earlier comments on this subject, HAC suggested that USDA's Section 514 program be included in the list of programs eligible for preservation assistance. This proposed rule discusses Section 514 loans in the context of service to rural markets rather than preservation markets (page 32109) and asks what kind of assistance the Enterprises could provide to farmworkers, particularly under the Section 514 program, since Section 514 loans cannot be purchased because USDA holds them in its portfolio.

While it is appropriate for aid to Section 514 properties to count towards the duty to serve rural areas, some existing Section 514 developments are in need of preservation, so Enterprise support of an existing project should count towards both goals.

The same assistance would be useful for new or existing Section 514 developments as for Section 515 or some of the other programs listed in the preservation section of the proposed rule, such as Section 8 vouchers. As HAC noted in its September 18, 2009 comments, USDA makes loans directly under both the Section 515 and 514 programs. The Enterprises can assist such properties by purchasing other loans or tax credits that are used for the same properties by providing grants or making other investments in the projects, or by assisting local nonprofit organizations.

III. MANUFACTURED HOUSING

Personal Property Loans for Manufactured Housing

The Housing Assistance Council strongly endorses FHFA's proposal that only manufactured homes titled as real estate be eligible under duty to serve provisions. 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. It is HAC's belief that consumers and residents of manufactured housing should be provided increased opportunities to obtain standard mortgage loans instead of personal property financing.

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Manufactured Home Communities

The Notice specifically solicits comments on whether assistance to manufactured home communities should be considered for purposes of duty to serve, with a special distinction between investor and resident owned communities.

Land-lease manufactured home communities are an important source of housing in rural America. Yet residents of these developments often encounter problems such as excessive rent increases, poor park management and maintenance, restrictive rules, and restricted access to municipal services. Furthermore, residents in manufactured home communities are vulnerable and lack recourse when problems arise because moving their units may be prohibitively expensive.

One proven strategy in stabilizing and improving manufactured home communities is the process of conversion or development of resident or nonprofit ownership. The Housing Assistance Council recommends that the Enterprises support resident or nonprofit owned manufactured home communities under duty to serve because they inherently provide greater consumer protection and investment potential than investor owned communities. HAC does not recommend that investor-owned communities be considered for duty to serve under the manufactured housing market.

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', followed by a horizontal line.

Moises Loza
Executive Director