March 17, 2016

Alfred M. Pollard, General Counsel  
Attention: Comments/RIN 2590-AA27  
Federal Housing Finance Agency  
Eighth Floor  
400 7th Street, SW  
Washington DC 20219

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) appreciates the opportunity to comment on the Federal Housing Finance Agency’s (FHFA’s) proposed Rule on the Duty to Serve Underserved Markets for Enterprises; Proposed Rule. 12 CFR Part 1282, RIN 2590-AA27. The Housing and Economic Recovery Act of 2008 mandates that Fannie Mae and Freddie Mac have a “Duty to Serve” three traditionally underserved markets of: Rural Housing, Manufactured Housing, and Affordable Housing Preservation. The Enterprises (Fannie Mae and Freddie Mac) are tasked with increasing liquidity and investment capital in these markets.

The Housing Assistance Council is a national nonprofit organization that supports affordable housing efforts in rural areas of the United States. HAC 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 housing strategies. HAC assists in the development of both single- and multi-family homes and promotes homeownership for low-income rural families. HAC previously commented on both the 2009 Advanced Notice of Proposed Rulemaking and the 2010 Proposed Rule on Duty to Serve, and is pleased that FHFA is now preparing the final implementation of Duty to Serve. With 45 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 Proposed Rule.
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Given its organizational focus on rural housing, HAC has prioritized its remarks beginning with Section 3. Rural Markets, followed by Section 2. Housing Preservation, and concluding with Section 1. Manufactured Housing.

3. RURAL MARKETS

Definition of “Rural Area”

The Notice presents four prospective definitions for consideration that would classify “Rural Areas” under the duty to serve regulations including: 1) U.S. Department of Agriculture (USDA) definition of “Rural,” 2) Consumer Financial Protection Bureau (CFPB) definition of “Rural,” 3) U.S. Census Bureau definition of “Rural,” and 4) FHFA proposed definition of “Rural Area” (§ 1282.1).

FHFA Request for Comments

Question 70. Would one of the four definitions discussed above better serve Duty to Serve objectives, and if so why?

After a detailed review and analysis, the Housing Assistance Council generally agrees with FHFA’s sub-county approach as presented in proposed option number four. FHFA’s proposed definition of Rural Area includes: (1) All census tracts outside of a Metropolitan Statistical Area (MSA) designated by the Office of Management and Budget (OMB), or (2) a census tract in an MSA, but outside of the MSA’s Urbanized Areas (UAs) or Urban Clusters (UCs) as designated by USDA’s Rural-Urban Commuting Area (RUCA) Codes 1, 4 and 7.

HAC Recommendation: The Housing Assistance Council recommends modification to the current proposed FHFA Duty to Serve Rural Area definition to provide for a more accurate indicator of rural area. Specifically, HAC recommends:

- Maintaining component number one (1) of FHFA’s proposed definition - A census tract outside of an OMB designated MSA.

- Modifying component number two (2) of FHFA’s proposed definition to a census tract in an MSA, but outside of Urbanized or Suburban tracts as designated by USDA RUCA Codes 1 and 2* (suburban tracts).

These selected suburban Census tracts are identified by USDA-ERS Rural Urban Commuting Code 2, that also have a housing density of more than 64 housing units per square mile. The housing density measure is a component of HAC’s Rural and Small Town Typology1 that is used by HAC and several other national housing intermediaries such as

1 For more information on HAC’s Rural and Small Town housing density adjustments see: http://www.ruralhome.org/storage/documents/policy_comments/dts/TECHNICAL_DOCUMENTATION_HAC_Rural__Small_Town_Definition.pdf
NeighborWorks America to more precisely identify rural and small territory. HAC’s recommended modifications improve upon shortcomings in the current proposed FHFA Rural Area classification by minimizing suburban territory, and including important “small town” areas for Duty to Serve rural credit.

**FHFA’s proposed Rural Area definition is too expansive and includes many suburban communities.** Most of the commonly used measures of rural area rely on a binary or dichotomous structure. In these formats, territory or population are classified as rural or urban, metropolitan or nonmetropolitan, eligible or non-eligible, etc. While these dual classification schemes are simple, easy to understand and incorporate, they typically overlook important settlement and population patterns common across much of the United States. Most notable is the frequent omission of suburban and exurban communities that are often socially and economically distinct from both rural and urban areas. It is estimated that roughly half of all Americans live in suburban settings. But suburban populations and communities are frequently appropriated into both rural and urban area definitions, skewing the actual characteristics of these communities.

The FHFA proposed Duty to Serve Rural Area is comprised of approximately 19,733 census tracts containing 76.9 million persons – or one quarter of the U.S. population. Using the Housing Assistance Council’s *Rural and Small Town* typology,² which is based on housing density, HAC estimates that approximately 2,030, or 10 percent, of FHFA proposed Duty to Serve Rural Area tracts are suburban in density and character.

An important component of recognizing suburban territory in the Duty to Serve context is Enterprise activity in those areas. Over a recent three year period (2012 -2014), the Enterprises purchased roughly 2.2 million mortgage loans in the proposed FHFA Rural Areas.³ HAC estimates that nearly 500,000 – or more than one-fifth – of those FHFA designated rural loan purchases were actually made in suburban tracts – an area less than 1 percent of the proposed FHFA Rural Area land mass (see Map 1).⁴

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Mortgage dollars often flow to suburban and more urbanized communities for a number of reasons ranging from higher incomes to greater access to financial services. For example, the median household income in the proposed FHFA Rural Area is $49,232. However, in the HAC identified suburban tracts within the FHFA Rural Area, the median household income is $61,749 – more than 30 percent higher than actual rural tracts in the HAC proposed designation.\(^5\)

For these reasons, the Housing Assistance Council strongly recommends that FHFA revisit its definition to more accurately identify “Rural Area” and minimize the inclusion of suburban territory for rural Duty to Serve credit. HAC believes that its recommendation largely achieves these improvements to the proposed FHFA Rural Area classification. HAC developed a list of 2,030 proposed FHFA Rural Area census tracts that it considers suburban in nature and believes should be omitted from the current proposed Rural Area definition.\(^6\)

\(^{5}\) Housing Assistance Council tabulations of the 2010-2014 American Community Survey five year estimates.

\(^{6}\) To access the list of identified Suburban Tracts in FHFA proposed Duty to Serve Rural Areas visit:
The FHFA proposed Rural Area definition is, at the same time, too restrictive and omits many small towns and actual rural territory. On the other end of the spectrum, the Housing Assistance Council believes that the current proposed FHFA Rural Area also restricts and omits territory and population that is actually small town, or even rural in nature. In most cases, these areas are classified by the Census Bureau as “Urban Clusters.” While these Urban Clusters have some density of population, they are often distinctly different from large urban areas and their surrounding suburbs in size, distance, commuting, and many other important social, economic, and housing characteristics.

The Housing Assistance Council has identified over 1,400 census tracts that are not classified as FHFA proposed Duty to Serve Rural Areas, yet are arguably rural or small town by almost any standard. HAC believes the omission of these tracts is largely due to technicalities and some shortcomings in the USDA Economic Research Service’s RUCA codes, which were used by FHFA to help designate Rural Areas in metropolitan tracts. These misclassified rural areas tend to be most prevalent in the Midwest and Western United States where populations are sparser and geographies can be vast.

A prime example of such an omission can be illustrated by the census tracts surrounding Rapid City, SD. Rapid City is classified an Urbanized Area by the U.S. Census Bureau and has a population of roughly 81,000. There are two census tracts adjacent to Rapid City in Meade County, SD (census tract 02500) and Pennington County, SD (census tract 01160) that are not eligible for Duty to Serve Rural Area credit under FHFA’s proposed definition. These two census tracts have a combined population of just over 11,000 and encompass more than 4,800 square miles, constituting a population density of 2.28 persons per square mile. With a national average of 90 persons per square mile, and a nearly 900 persons per square mile average in other FHFA non Rural Areas, these tracts are arguably remote rural territory. To place this incongruity in perspective, the two identified SD tracts are larger in land area than the Boston, MA, Metropolitan Area, but they have a population of only 11,100. (See Map 2). These SD tracts are omitted from FHFA proposed Rural Areas, because they are classified with a USDA RUCA Code 7.
HAC believes that the recommendation to eliminate the Metro RUCA Code 4 and 7 component of the proposed FHFA Rural Area classification will largely remedy such misclassifications and omissions of truly rural or small town areas.\textsuperscript{7}

HAC’s recommendations decrease FHFA’s proposed Rural Area footprint by omitting approximately 2,030 suburban tracts, typically adjacent to large urbanized areas. Simultaneously, HAC’s recommendations increase Duty to Serve Rural Areas with the addition of 1,464 small town and rural tracts that have been omitted from FHFA’s proposed classification. HAC’s recommendation generally rebalances the Duty to Serve Rural Area classification, but does not radically change FHFA’s overall approach, parameters, or essence of the classification as illustrated in Table 1, below.

\textsuperscript{7} For a full list of the identified 1,464 non-rural tracts that are considered rural or small town by HAC please visit: \url{http://www.ruralhome.org/whats-new/menu-policy/mn-dts}
Table 1. Comparison of FHFA Proposed and HAC Recommended Rural Area Definition

<table>
<thead>
<tr>
<th>Proposed Indicator Definition</th>
<th>FHFA Proposed DTS Rural Area</th>
<th>HAC Recommended Modification</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Outside Metro tracts. Metro Tracts except RUCA 1, 4, &amp;7</td>
<td>Outside Metro tracts. Metro Tracts except RUCA 1, &amp; 2* (* suburban tracts)</td>
</tr>
</tbody>
</table>

Demographic Characteristics

<table>
<thead>
<tr>
<th></th>
<th>FHFA Proposed DTS Rural Area</th>
<th>HAC Recommended Modification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Census Tracts</td>
<td>19,733</td>
<td>19,167</td>
</tr>
<tr>
<td>Population</td>
<td>76,920,728</td>
<td>74,032,807</td>
</tr>
<tr>
<td>% of U.S. Population</td>
<td>24.9%</td>
<td>24.0%</td>
</tr>
<tr>
<td>% of U.S. Land Mass</td>
<td>92.5%</td>
<td>93.4%</td>
</tr>
<tr>
<td>Median Household Income</td>
<td>$49,232</td>
<td>$47,211</td>
</tr>
<tr>
<td>Recent GSE Activity 2012-2014 (Loans)</td>
<td>2,246,559</td>
<td>1,996,340</td>
</tr>
</tbody>
</table>

Source: HAC Tabulations of 2010 Census of Population and Housing and 2012-2014 HMDA Data

Recommended Changes to FHFA Proposed Rural Areas

Map 3. To access a larger size image of this map, visit:
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There is no perfect definition of rural, and each of the four concepts presented in the Rule has positive attributes. It is the Housing Assistance Council’s belief that FHFA’s proposed Rural Area concept is preferred among the options presented because of its reliance on standard sub-county (tracts) geography. This approach also enables better operationalization and incorporation of the measure by the Enterprises and reduces the volatility and structural problems present in some of the other measures.

**Enterprise Activities in Rural Areas**

**FHFA Request for Comments**

**Question 68. What types of barriers exist to rural lending for housing and how can the Enterprises best address them?**

**Barrier: The High Cost of Mortgage Access in Rural America.** Between 2005 and 2014 rural mortgage originations consistently represented between 14 and 16 percent of all U.S. mortgage activity annually, which is several percentage points below the rural share of the population (roughly one quarter of the population).\(^8\) In addition to low levels of mortgage lending, rural loan applicants experience relatively high loan denial rates. According to HAC analyses of Home Mortgage Disclosure Act (HMDA) data, lenders denied 18 percent of rural home purchase applications in 2014, compared to 11 and 12 percent for suburban and urban applications respectively. This large difference in rural denial rates is not just a singular occurrence. Denial rates for rural home purchase loans have exceeded suburban and urban rates by 5 percentage points or more for every year since 2011.

In addition to the elevated denials rates, rural mortgage applicants who successfully navigate the mortgage lending process more often received “high cost” loans. Since the onset of the Great Recession in 2007, the rate of rural originations classified as high cost consistently exceeded suburban and urban levels. For example, 15 percent of rural home purchase loans were higher priced compared to 11 and 12 percent for suburban and exurban borrowers in 2014.\(^10\)

**HAC Recommendation: To help address the deficiencies in the rural mortgage market related to lack of a lack of credit, mortgage denials, and higher priced lending, the Housing Assistance Council would encourage increased Enterprise purchases of USDA Section 502 guaranteed loans.**

USDA’s Section 502 homeownership guaranteed mortgage product has become an important and growing source of mortgage credit for low- and moderate-income...

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\(^8\) HAC Tabulations of 2005-2014 Home Mortgage Disclosure Act Data.  
\(^9\) A high-cost loan is defined by the Consumer Financial Protection Bureau, Code of Federal Regulations 12 (2014), § 1026.35(a), as a first lien loan with an interest rate of 1.5 percentage points or more than one would receive for similar prime rate loan. For second lien loans, a high cost loan has an interest rate of 3.5 percentage points or more than the interest rate for a similar prime loan.  
\(^10\) HAC Tabulations of 2014 Home Mortgage Disclosure Act Data.
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households. In 2014, USDA Section 502 guaranteed loans comprised roughly 10 percent of all rural loan originations, a ten-fold increase from 2005. However, the Enterprises are not generally active in USDA guaranteed loans, with less than 1 percent of the purchase activity between 2012 and 2014. Most of the purchase activity within USDA guaranteed single-family home loans is dominated by Ginnie Mae and commercial lenders.

**Barrier: The Mortgage Marketplace Continues to Evolve in Rural Communities.** Changes in the financial and mortgage lending landscape over the last two decades have impacted rural communities. The banking industry has undergone considerable consolidation, with the number of lenders insured by the Federal Deposit Insurance Corporation (FDIC) dropping from approximately 15,000 in 1990 to just over 7,000 in 2014. Between 2000 and 2010, the number of depository institutions based in rural areas declined by 21 percent.

While three-quarters of rural banks are classified as small lenders, and they originate the majority of loans in some rural areas, they originated only 13 percent of rural mortgages nationwide in 2012. Conversely, large, predominately urban-based banks made nearly 70 percent of mortgages in rural areas in 2012. The impacts of bank consolidation are also evident in concentrations of home mortgage activity within rural communities. In 2014, nearly 30 percent of all rural and small town HMDA-reported home purchase loans were made by just 10 banks. Bank mergers and consolidations may impact rural communities in other ways as well. Large banks serving places far from their home bases may not be as attached to the communities they serve as smaller community banks may. As a result, large banks do not fully know their new customer base, and they may make fewer loans and be less involved in the community.

**HAC Recommendation:** To help incentivize community-based lending and financial services, the Housing Assistance Council recommends that the Enterprises receive extra credit for purchasing rural mortgage loans from small bank lenders. HAC recommends using the Community Reinvestment Act’s (CRA’s) classification of small financial institution as one having below $305 million in assets.

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12 Ibid.
13 HAC Tabulations of 2014 Home Mortgage Disclosure Act Data.
16 The CRA regulatory agencies release an annual joint statement adjusting for inflation the asset thresholds associated with each CRA examination type.
Barrier: Bad credit and household debt are substantial impediments to accessing quality mortgage finance, especially for low-income households. In recent years American consumers have been awash in easy access personal credit, especially through credit cards with high fees and interest rates. According to 2014 HMDA data, credit history was the reason cited most frequently for home purchase loan denials. Approximately 47 percent of denied mortgage applications in rural and small town areas were based on bad credit history or a high debt to income ratio in 2014.\textsuperscript{17} Similarly, a recent review of USDA Section 502 direct loan mortgage applications indicated that 45 percent of loan denials were based on unfavorable credit history.\textsuperscript{18} Nonprofit stakeholders have long commented that in order to qualify borrowers for affordable homeownership programs, they must often consider hundreds of applicants, largely because of credit problems and debt load.\textsuperscript{19} A poor credit history, especially when combined with a low income, is increasingly making a home mortgage with a prime interest rate out of reach for many rural homebuyers.

HAC Recommendation: To help address the substantial problems of bad debt and credit levels, the Enterprises should receive Duty to Serve credit for developing, facilitating, and funding housing and credit counseling services and resources, specifically for rural communities.

FHFA Request for Comments

Question 69. What types of Enterprise activities could help build institutional capacity and expertise among market participants serving rural areas?

HAC Recommendation: The Housing Assistance Council recommends that FHFA lift the current ban on Enterprise grant making to allow for capacity-building grants to local community-based nonprofit, mission aligned, or tribally led housing organizations in Rural Areas. The Enterprises should receive rural Duty to Serve credit for the extension of such grants.

Nonprofit affordable housing organizations are integral to the provision of affordable housing in rural communities. Community-based and mission-aligned organizations are all too often the only local organizations providing affordable housing for low-income people in rural areas. Rural housing developers often face difficult problems that may not be as prevalent in urban areas. A lack of financial institutions, and limited access to labor markets and construction material can hinder the development of affordable housing in rural areas. Working within these limitations, community-based organizations are the essential connections that transform public and private funding into affordable homes. While community-based rural housing providers are frequently established organizations, they have relatively small staffs. A recent HAC survey of rural housing providers found

\begin{itemize}
\item \textsuperscript{17} HAC tabulations of 2014 Home Mortgage Disclosure Act Data.
\item \textsuperscript{18} Housing Assistance Council. \textit{Very Low-Income Loan Obligations Within USDA’s Section 502 Direct Loan Program}. Washington, DC: Housing Assistance Council, 2010.
\item \textsuperscript{19} Ibid.
\end{itemize}
that approximately 43 percent of rural housing organizations had fewer than five housing-specific staff members. The complexities of housing development can be daunting in the most optimized environments, and overwhelming for organizations with limited staff and resources. The Enterprises could make an important contribution to these often under-resourced organizations through capacity building grants for rural nonprofits.

HAC Recommendation: The Housing Assistance Council recommends that the Enterprises should be granted Duty to Serve credit for the development, support, or commissioning of rural housing research and market data.

*There is a dearth of quality data and information on rural housing markets and characteristics.* Quality data are essential to the understanding and betterment of housing conditions. Unique geography and population characteristics impose constraints on the quality of data in more sparsely settled rural areas. Data for rural areas is frequently suppressed, or even omitted, from many surveys and information sources. Like many elements of rural housing, data is more difficult to access and use in rural areas than for cities and suburbs. Accurate and timely information about rural markets would greatly enhance the Enterprises’ ability to fulfill their Duty to Serve rural markets more efficiently and with greater foresight.

**High-Needs Rural Regions and High-Needs Rural Populations – Proposed § 1282.35 (c)**

The proposed Rule would provide Duty to Serve credit for Enterprise support of financing of income-eligible housing for high-needs rural regions and populations. Under the proposed rule, this activity would constitute a Regulatory Activity which the Enterprises would have to address in their Underserved Markets Plans by indicating how they choose to undertake the activity or the reasons why they will not undertake the activity.

**FHFA Request for Comments**

*Question 72. Should Enterprise support for housing for high-needs rural regions and high-needs rural populations be a Regulatory Activity?*

**HAC Recommendation: The Housing Assistance Council strongly supports housing for high-needs rural regions and high-needs rural populations as a Regulatory Activity under Duty to Serve.**

*High Need Rural Areas and High-Need Rural Populations suffer from an extreme lack of mortgage access and investment capital.* The Housing Assistance Council applauds FHFA for the recognition and inclusion of High-Need Rural Areas and populations as Regulatory Activity under Duty to Serve. Different from much of the rest of the United States, these regions and populations experience widespread and persistent poverty, exacerbated by historical circumstances and benign neglect. The economic downturn and housing crisis has only served to exacerbate these conditions as more jobs have been lost and mortgage finance and quality financial services can be difficult to access. These
underserved areas and their inhabitants have often been described as Forgotten America. HAC is pleased that these areas have not been forgotten by FHFA and Duty to Serve.

**FHFA Request for Comments**

**Question 73. What activities could the Enterprises undertake to provide liquidity and other support to high-needs rural regions and high-needs rural populations?**

HAC Recommendation: To help incentivize quality mortgage access and increased capital, the Housing Assistance Council recommends that the Enterprises receive extra credit for purchasing mortgage loans and conducting other qualified Duty to Serve activities in the identified and recommended 20 high-needs rural areas and populations.

*Many of the identified barriers to quality rural housing are even more pronounced in these high need rural areas.* The high-need and higher poverty rural regions and populations have many shared indices of economic distress and lack of mortgage access. Yet they also differ in terms of demographic and cultural composition, geography, and underlying economies. Given these fundamental differences across the different communities HAC is hesitant to suggest specific policy prescriptions and strategies. Rather, we believe the extension of extra credit in these areas would incentivize Enterprises’ activity in rural high-need communities and populations.

**FHFA Request for Comments**

**Question 77. Are there high-needs rural regions and/or high needs rural populations in addition to those identified above that should be included in this section, and, if so, how should they be defined to receive Duty to Serve credit?**

HAC Recommendation: In addition to the proposed high-need rural regions and populations, The Housing Assistance Council recommends that FHFA include service to rural persistent poverty counties, as identified by U.S. Department of the Treasury’s CDFI Fund as a Regulatory Activity under Duty to Serve’s High Need Rural Regions and Populations.

*Rural persistent poverty counties identify several regions and populations that experience shared indices of economic distress, poor housing conditions, and a lack of access to capital.* The recommended Persistent Poverty measure used by the U.S. Department of the Treasury's CDFI Fund. Using this metric – poverty rates of 20 percent or more in 1990, 2000, and 2010 – there were 384 persistently poor counties in 2010. Most of these persistent poverty areas are concentrated within, or overlap, underserved areas and their inhabitants have often been described as Forgotten America.

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20 See HAC response to question #77 (page 12)
21 See HAC response to question #68 (page 8)
22 Community Development Financial Institutions Fund.

currently identified high need regions and populations such as Central Appalachia, the Lower Mississippi Delta, the Colonias along the U.S.-Mexico border, and Native American lands. However, the persistent poverty indicator also captures regions, notably the Southern Black Belt and some Western counties that are omitted from the current FHFA designation, but have shared indices of economic distress and poverty and rurality. The Southern Black Belt region has distinct economies, cultures, and historic legacies that set it apart from much of mainstream America. Despite the richness of the land and its diverse background, this region is now known for its extreme levels of poverty that exceed that of the nation as a whole, especially among its rural African-American population.23 Similarly, a substantial number of migrant and seasonal farmworkers in persistent poverty counties in the Central Valley of California are also omitted from the current FHFA High-Need designation (see Map 4).24

Rural High Need Areas and Persistent Poverty Counties

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24 To access a larger size image of this map, visit: [http://www.ruralhome.org/storage/documents/policy_comments/dts/High_Need_Persistent_Poverty_Map.pdf](http://www.ruralhome.org/storage/documents/policy_comments/dts/High_Need_Persistent_Poverty_Map.pdf)
2. HOUSING PRESERVATION

Because HAC’s mission and its expertise center on affordable rural housing, this section of HAC’s comments largely addresses preservation in the rural context. One of the biggest challenges in rural housing currently is preservation of affordable rental housing developed under the Section 515 Rural Rental Housing and the Section 514/516 Farm Labor Housing programs of the U.S. Department of Agriculture (USDA). HAC appreciates the statute’s and FHFA’s recognition of this issue and offers the following comments and recommendations.

FHFA Request for Comments

Question 27. Are there other options on how to interpret preservation of multifamily or single-family affordable housing that FHFA should consider [in addition to preserving rent affordability]?

The Housing Assistance Council agrees that purchase of refinanced mortgages on existing rental properties with long-term affordability agreements should be included in the definition of preservation. It should be clear that that category includes mortgages on properties whose subsidized mortgages are maturing, where long-term affordability agreements will replace use restrictions that accompanied those subsidized mortgages. The vast majority of Section 515 properties were constructed during the 1970s and 1980s with 50-year or 30-year mortgages that are now ending. USDA has estimated that “over the next eight years, approximately 11,500 RD Section 515 [properties] will have their mortgages mature.”

In September 2015 USDA reported there were just under 14,000 properties in its Section 515 portfolio; thus as much as 82 percent of the portfolio may be lost by 2024. By purchasing mortgages that enable current or new owners to renovate these properties and requiring their owners to maintain them as affordable, the Enterprises can play an important role in saving the affordable homes of hundreds of thousands of tenants.

Some state housing finance agencies, including Minnesota and Oregon, have prioritized preservation of housing that includes rental assistance of some sort so that aid is not lost when properties leave the assisted housing stock. HAC agrees that those properties are important, and suggests the Enterprises be encouraged to establish the same priority.

FHFA Request for Comments

28. Should FHFA require that preservation activities extend the property’s regulatory agreement that restricts household incomes and rents for some minimum number of years, such as 10 years, beyond the date of the Enterprises’ loan purchase?

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Since Low Income Housing Tax Credits carry a 15-year restriction, the Housing Assistance Council believes this to be a reasonable minimum for mortgage financing as well. HAC recognizes that affordability restrictions pose challenges to rental property owners, but believes they are a fair exchange for the benefits offered by Duty to Serve credit, particularly in rural areas where multifamily financing may be difficult to find.

FHFA Request for Comments

Question 29. Should Enterprise purchases of permanent construction takeout loans on new affordable multifamily rental properties with extended-use regulatory agreements . . . receive credit . . . ?

HAC Recommendation: The Housing Assistance Council does not support expanding the definition of preservation to include new construction of affordable rental housing. Such new construction is certainly needed in many parts of the country, but it is already supported by the Enterprises’ affordable housing goals. Preservation of existing subsidized units should receive extra support through the duty to serve regulations because it involves preserving the value of past government expenditures and avoids displacing tenants from their current homes, a particularly important factor for elderly renters.

FHFA Request for Comments

Question 37. Are there other ways in which the Enterprises could extend their support for the USDA Section 515 Rural Housing Program?

HAC Recommendation: The Housing Assistance Council presents several suggestions to how the Enterprises can extend support for USDA’s Section 515 Rural Housing Program:

Purchase loans. The proposed rule states that “both Enterprises currently purchase loans originated under the Section 515 program.” This is not the case, however. USDA itself makes Section 515 loans and holds them in portfolio. The Enterprises probably purchase loans made by private lenders with USDA guarantees under the Section 538 program, which is discussed further under question 38 below.

The Duty to Serve rule could, nevertheless, be very useful in encouraging preservation of aging USDA-financed that need renovations and repairs, and those with maturing mortgages, under both Section 515 and Section 514. The Section 514 off-farm farm labor housing program, like Section 515, enables USDA to make direct loans and hold them in portfolio. Off-farm Section 514 loans are almost always combined with Section 516 grant funding for farm labor housing, so the program is often called Section 514/516, but the Enterprises have no potential role with respect to Section 516 grants.

To assist with preservation of affordable rental properties financed with Section 515 or off-farm 514 mortgages, the Enterprises should receive credit for purchasing loans –
including those guaranteed under the Section 538 program – that finance rehabilitation of such properties, and those that enable continued operation with use restrictions of properties when Section 515 or off-farm 514 mortgages are in danger of being prepaid or expiring.

These purchases should include loans made when an existing Section 515 or off-farm 514 mortgage is being reamortized in order to keep it in place rather than letting it expire. Retaining the Section 515 or off-farm 514 mortgage, which can be subordinated to new debt, is a significant advantage because USDA Section 521 Rental Assistance is available only to properties with USDA loans under Section 515 or 514.

**Give extra credit for purchasing loans to preserve very small multifamily properties.** It can be difficult to find financing to preserve small properties, and in most rural areas there are few or no properties with more than 30 units (in fact, properties in the Section 515 and 514 portfolio average 30 units). Extra credit should be offered for loans that would help preserve such very small multifamily properties. In fact, preservation may be most effective when several small properties are “bundled” into a single portfolio or a scattered-site property for purposes of sale and/or rehabilitation, so the Enterprises should be encouraged to purchase loans made on such bundles.

**Offer bridge loans for rural preservation.** Freddie Mac offers a Bridge to Resyndication product, a 24-month loan to acquire an expiring Low Income Housing Tax Credit property and position it for resyndication. A similar product for properties with expiring or prepaying Section 515 or off-farm 514 mortgages could be very helpful.

**Provide outreach and education.** Some lenders might be willing to participate in Section 515 and 514 preservation if they understood better what was involved, or if they were introduced to potentially eligible borrowers. The Enterprises could facilitate preservation by offering education and training for lenders, and by helping buyers, sellers, and financial resources find each other.

**Support lenders in complex preservation deals.** Rural preservation deals, like others, may involve numerous financing sources and complex underwriting. Unlike others, however, rural deals cannot offer the economies of scale or the profit potential needed to attract financing or tax credit equity from large commercial lenders. Community Development Financial Institutions and other mission-driven lenders are significant players in this arena, but their ability to participate is limited by the time and labor required to participate. The Enterprises could help underwrite their costs or could share the costs by lowering fees.

**Work with USDA and state agencies.** Not only bridge loans, but also Enterprise involvement, could facilitate rural preservation transactions involving Low Income Housing Tax Credits and other funding from state agencies. The Enterprises could help additional states develop rural set-asides for 9 percent tax credit funding, as well as

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funding reserves to help close gaps in deals using 4 percent tax credits and/or bonds deals.

**FHFA Request for Comments**

*Question 38. Are there other federal affordable housing programs that the Enterprises could support that should receive Duty to Serve credit but that are not enumerated in § 1282.34(c) of the proposed rule?*

**HAC Recommendation:** The Housing Assistance Council recommends adding two rural housing programs to this list: USDA’s farm labor housing program under Section 514 of the Housing Act of 1949 (42 U.S.C. 1484), and its rental housing guarantee program under Section 538 of the Housing Act of 1949 (42 U.S.C. 1490p-2).

**FHFA Request for Comments**

*Question 42. If FHFA allows the Enterprises to resume LIHTC investments, should FHFA limit investments to support for difficult to develop projects in segments of the market with less investor demand, such as projects in markets outside of the assessment areas of large banks or in rural markets or for preservation of projects with expiring subsidies? Are there other issues that FHFA should consider if limiting the types of LIHTC projects appropriate for equity investment by the Enterprises?*

**HAC Recommendation:** The Housing Assistance Council recommends that FHFA allow the resumption of LIHTC investments in the proposed and recommended Rural Areas.

### 1. MANUFACTURED HOUSING

Section 1282.33(c) of the proposed rule would provide Duty to Serve credit for specific types of manufactured home activities including: 1) mortgages on manufactured homes titled as real property under the laws of the state where the home is located; and 2) mortgages on manufactured housing communities provided that: a) the community has 150 pads or less; b) the community is government-, nonprofit-, or resident-owned; or c) the community has certain minimum specified pad lease protections for tenants.

**FHFA Request for Comments**

*Question 11. Should Enterprise support for manufactured home loans titled as real property be a Regulatory Activity?*

The Housing Assistance Council supports the purchase of manufactured home loans, titled *exclusively* as real property, as a Regulatory Activity under Duty to Serve.
The Housing Assistance Council believes that manufactured homes – while an overlooked and maligned component of our nation’s housing stock – are an important source of housing for millions of Americans, especially those with low incomes and in rural areas. More than half of all manufactured homes are located in rural areas around the country. HAC fully understands that manufactured housing is often the “housing of choice” in rural America where affordability and convenience make manufactured homes a popular option. While the purchase price of manufactured homes can be relatively affordable, financing them is not. As is well documented in the proposed rule, the majority of manufactured homes are still financed with personal property, or “chattel,” loans. With shorter terms and higher interest rates, personal property loans are generally less beneficial for consumers than conventional mortgage financing. Roughly three-quarters of manufactured home loans in 2014 were classified as “high cost” (having a substantially high interest rate) which is more than six times the level of high cost lending for newly constructed single-family structures.

Modern manufactured homes have evolved from automobiles and recreational travel trailers into high quality homes. However, the system through which manufactured homes are sold, financed, appraised, and warrantied has not progressed much for more than a half-century. Consumers of manufactured homes are penalized by this asymmetric system with higher interest rates, shorter terms, and fewer protections than if they had a standard home mortgage. It is HAC’s belief and hope that the Enterprise’s support of real property purchases will help begin to shift an outmoded and outdated finance system so that manufactured homeowners may increasingly be provided opportunities to obtain standard mortgage lending instead of personal property loans.

**FHFA Request for Comments**

*Question 13. Should the Enterprises receive credit for purchasing chattel loans, on an ongoing or pilot basis? If so what improvements should be made in the process for originating and servicing that would make chattel loans safer for purchase by the Enterprises and safer for borrowers?*

HAC strongly recommends that manufactured homes be financed as real estate loans to receive Duty to Serve credit. At the same time, HAC also understands that these lending criteria may be limiting in some areas considering the current market, finance environment, and state regulations on land titling. Therefore, a limited pilot may be warranted and instructive. 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 use the Consumer Financial Protection Bureau’s definition, 12 C.F.R. § 1026.35(a) (2014) of a high cost loan

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28 Housing Assistance Council Tabulations of 2014 Home Mortgage Disclosure Act Data.
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as a first lien loan with an interest rate 1.5 percentage points or more than one would receive for similar prime rate loan. For second lien loans, a high cost loan has an interest rate of 3.5 percentage points or more than the interest rate for a similar prime loan. Under no circumstances should the Enterprises receive Duty to Serve credit for the purchase of manufactured home loans in a pilot program, or otherwise, 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.

FHFA Request for Comments

Questions 16. Are there other segments of the manufactured housing market besides those discussed above that warrant Enterprise support under the Duty to Serve, such as communities located in lower-income or economically distressed areas?

Many migrant and seasonal farmworkers reside in substandard manufactured home communities temporarily or for longer periods. There are an untold number of substandard manufactured home parks across the nation that serve as a primary source of housing for farmworkers. The Department of Labor’s National Agricultural Workers Survey (NAWS) estimates that nearly one-fifth of farmworkers live in mobile or manufactured homes.29 The Housing Assistance Council’s 200230 national survey of farmworker housing conditions estimated that mobile or manufactured homes experienced the highest rate of substandard conditions of any farmworker-occupied structure type (44 percent).31 These old manufactured home parks are emblematic of the challenge many farmworkers face in finding decent housing in the private market.

An example of both distress and accomplishment in substandard farmworker housing manufactured home communities can be evidenced in the high profile case of Duroville, CA. The Desert Mobile Home Park (commonly referred to as “Duroville,” named for its owner) was an infamous manufactured home community located in California’s Coachella Valley on the Torres Martinez Indian Reservation. This community was largely inhabited by farmworkers, with an estimated 2,000 to 6,000 migrant workers living in the park’s several hundred manufactured homes.32 Duroville gained national attention because of its deplorable housing conditions and the legal battles surrounding its continued operation. Duroville residents resided in very old mobile homes amidst unsafe and unsanitary conditions.33 In response to numerous health and housing violations, the U.S Attorney’s

30 Most recent national data available.
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Office on behalf of the Bureau of the Indian Affairs sought to have the park closed in 2009. A contentious and complicated legal battle ensued, and after many years Duroville was finally closed in 2013. Most of Duroville’s residents have been relocated to Mountain View Estates, a newly developed community of modern manufactured homes funded with public and private resources.34

The relocation project from the dilapidated Duroville to Mountain View Estates is a positive example of both manufactured housing communities and high needs population of migrant and seasonal farmworkers that would be worthy of Duty to Serve credit.

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

Sincerely,

Moises Loza
Executive Director