



Council for Affordable and Rural Housing

Serving the Affordable Housing Needs of Rural America

March 17, 2016

VIA EMAIL: www.regulations.com and RegComments@fhfa.gov)

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

Re: Comments/RIN 2590-AA27
Enterprise Duty to Serve Underserved Markets
Notice of Proposed Rulemaking (“Notice”)

Dear Mr. Pollard:

The Council for Affordable and Rural Housing (“CARH”) provides its comments to the Notice of Proposed Rulemaking (“Notice”) that would establish a method for evaluating and rating the Enterprises’ compliance with the Duty to Serve underserved markets.

CARH represents for-profit and non-profit companies providing affordable rural rental housing throughout America. For over 35 years, CARH has served as the nation’s premier association for participants in the affordable rural housing profession, including builders, owners, developers, managers, non-profits, housing authorities, syndicators, accountants, architects, attorneys, bankers, and companies that supply goods and services to the industry. CARH is the only association that solely represents the needs of the entire rural affordable housing industry.

The proposed rule was mandated by Congress in the Housing and Economic Recovery Act of 2008 (HERA). We appreciate the effort to produce this regulation. We are concerned about the rigor in which it will be implemented in light of the fact that it has taken about seven years to promulgate the proposed regulation. We understand that each Enterprise would need to submit an “Underserved Markets Plan,” subject to Agency review, acceptance, and public comment, providing goals to address underserved markets over a three-year period. Progress would be monitored through quarterly reports by each Enterprise to FHFA. Progress would be measured on a 100 point scale and a grade for the three goals of preserving existing affordable housing stock, improving credit access to manufactured housing homeowners, and expanding support to renters and homeowners in rural communities. The Duty to Serve would be enforceable to the same extent as the Fannie Mae and Freddie Mac Housing goals.

We strongly support any effort to assist and support affordable housing preservation in rural areas, including facilitating a secondary market for mortgages. We encourage consistency between program definitions of what constitutes a rural area. We submit that rural areas should

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include any rural area as defined in any existing federal mortgage program, or properties grandfathered in to rural housing programs under the Housing Act of 1949. In particular, this means opening up to increased secondary markets for the USDA Section 538 Guaranteed Rural Rental Housing Program.

USDA rural housing programs will come under the definition of “rural” under Section 520 of the Housing Act of 1949. We believe that definition should be modified and expanded to include all areas with a population of less than 50,000 persons. However, that will require a statutory change. Until that time, we must follow the statutory limit that affects most of the federal rural affordable housing programs. We note that several laws have similar but different definitions of “rural” and that can create confusion.

The Notice asks certain specific questions. Responding to question 37, the Enterprises can extend their support for USDA Section 515 Rural Rental Housing Programs by working with USDA’s Rural Development (“RD”) office as to underwriting that would be achievable within RD’s rent expectations. The Enterprises will generally look to market driven rents and expenses. RD underwriting tends to focus on reducing rents below market so as to save on its own Section 521 Rental Assistance program, potentially at the expense of sound project underwriting. RD staff has pointed to Fannie Mae underwriting standards to support its position. We believe RD has misunderstood Fannie Mae’s underwriting. This disconnect can be solved through the Enterprises imparting their greater experience working with commercial debt and equity investment expectations.

The Enterprises have participated in forms of construction lending during the acquisition rehabilitation of existing Section 515 properties. The Enterprises have and can play a valuable role as a secondary market for new senior loan debt to subordinated 515 loans. We would agree and encourage that this role is extremely important in Section 515 preservation.

Responding to question 38 and 73, the Section 538 Guaranteed Rural Rental Housing Program is another federal affordable housing program that the Enterprises could support not enumerated in proposed Section 1282.34(c). Section 538 of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to guarantee loans on multifamily properties. This program is budgeted in the Administration’s proposed Fiscal Year (FY) 2017 budget at \$230 million. RD has not been able to fully utilize prior year program budgets. Expanding the secondary market support for the Section 538 program will help facilitate full program use to meet demand for affordable credit in rural areas.

Further, we believe that along with the Section 515 Program, the Enterprises should serve the related Section 514 loan and 516 grant programs for Farm Labor Housing. This can also be used similarly to 515 assisted programs.

In response to questions 30, 41-44, the Enterprises service a significant role in providing a secondary market for debt financing for multifamily real estate and for housing assistance with federal rental assistance and other subsidies. Before 2008, Fannie Mae and Freddie Mac also participated materially in equity finance of affordable housing by acquiring owner interests and financing the acquisition through the low income housing tax credit. We support that the Enterprises should resume making tax credit equity investments. Such participation creates an

additional option for affordable housing developers and lenders seeking additional, efficient investors.

As a point to be noted, the Enterprises' participation before 2008 strongly supported the pricing for tax credits. When the Enterprises had to reduce and then end equity participation in 2008, the Enterprises were a substantial portion of the investors, indeed a majority. The sudden withdrawal at least exacerbated, and to a significant degree, created a crisis in raising equity for the affordable housing tax credit transactions. As such, future participation should be tempered so as to not preclude a diverse investment pool.

That said, limiting the Enterprises to difficult to develop projects could create greater overall risk. The Enterprises should focus on housing already supported or with evidence of new financial support, in federal, state and local housing programs. These properties already have received underwriting scrutiny and financial support. Enterprises should prioritize preservation of existing affordable housing properties both because such properties have already generated indicia of support through raising financing through affordable housing agencies, but also to help preserve existing public investment. Still, new construction should also be supported.

Residential economic diversity is a reasonable goal. It is possible to have properties or areas with multiple income tiers. However, rural affordable housing generally houses extremely low income persons, 30% of area median income or less. Moreover, RD generally requires uniform rent and income levels across a given property or pool of properties with common financing.

The Enterprises should be permitted to utilize different tools, including guarantor of equity investments in projects by third-party investors. This strategy has been successful in the past and allows the Enterprises to support rural areas, in essence leveraging resources that might otherwise be limited to another investment.

In response to question 46, the Enterprises should examine participation in the small loan program that HUD has initiated under its Small Building Risk Sharing Initiative (July 15, 2015 Federal Register, page 42105). This small loan program is focused on small multifamily properties, and rural multifamily programs typically meet the requirements set out in that program.

In response to question 51, Enterprise support for multifamily properties should include support for properties with energy improvements that result in savings for residents' energy and water consumption.

Question 72 asks if Enterprises should support housing for high needs rural regions and high need rural populations. We believe that is a definite "yes". There are significant regulatory choices made by RD that do not support high need rural populations (i.e., RD does not generally permit 515 revenues to support tenant supportive services). As a result, there is a large unmet need.

Responding to question 82, FHFA's proposed definition of "high opportunity area" should be interpreted to at least cover all Difficult Development Areas (DDAs) (qualified census tracts, as applicable) under the low income housing tax credit.

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We also suggest that the Enterprises can support the USDA Section 515 program by supporting loan products at greater than 30 years, to work as supplemental soft debt or amortizing debt that is compatible with Section 515 operating requirements.

We appreciate your time and attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Colleen M. Fisher". The signature is written in black ink and is positioned above the printed name and title.

Colleen M. Fisher
Executive Director