NCLR
NATIONAL COUNCIL OF LA RAZA

National Office
Raul Yzaguirre Building
1126 16th Street, NW
Washington, DC 20036

TEL 202.785.1670
FAX 202.776.1792
www.nclr.org

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Federal Housing Finance Agency
Constitution Center
400 7th Street, SW
Washington, DC 20219

Re: Comments on the Proposed Duty to Serve Evaluation Guidance for Scoring Enterprise Performance in the 2018-2020 Cycle

On behalf of the National Council of La Raza (NCLR) the National Urban League, please accept these comments on the proposed Duty to Serve Evaluation Process for Scoring the Performance of Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) in carrying out their Underserved Markets Plans.

NCLR is the largest constituency-based Hispanic organization in the United States, dedicated to improving life opportunities for the nation's 56 million Hispanics. The National Urban League is the nation's largest historic civil rights and urban advocacy organization focused on economic empowerment. As a result, NCLR and the National Urban League have a deep interest in improving the access of Hispanics, communities of color and low-income Americans to mortgage financing and homeownership. NCLR and the National Urban League applauds FHFA for passing the final Duty to Serve rule, which aims to both challenge and encourage the Enterprises to better serve minority markets and low-income households.

Overview

The secondary mortgage market plays a crucial role in promoting homeownership.[1] However, the opportunity to become a homeowner and build wealth to transfer to future generations, is not equally distributed in today's economy. This is especially true for borrowers who come from communities of color and have low levels of wealth: Black and Latino median net household wealth, $11,000 and $13,700 respectively, is one-tenth that of White households ($134,200).[2]

Nearly 10 years after the mortgage meltdown, Latino, Black and low-income families are still recovering from a lingering economic depression left behind in the wake of the foreclosure and financial crises. Communities of color were preyed upon by unscrupulous lenders in the run-up to the financial crisis, losing 30% of their household wealth between 2007-2010.[3] Today, the share of mortgage loans made to minority borrowers is significantly lower than the share to White borrowers. In 2015, only 5.5%[4] of loans were made to Black borrowers, more than three percentage points lower than in 2006, before the crisis; the share made to Latino borrowers was 8.3%, down from 11.7% in 2006. That same year, more than 68% of loans were made to White borrowers.

To expand homeownership opportunities for Latinos, Blacks, and low-income Americans, and further aid the nation's economic recovery, access to affordable homeownership is critical. Yet barriers are acutely experienced by homebuyers from communities of color,[5] whose household savings were decimated during the financial crisis. Minority borrowers are projected to account for 75% of household growth in the next decade, with Latinos anticipated to account for 50% of new homeowners.[6] Through its Duty to Serve, the secondary market must respond by incorporating the needs of Hispanics, Blacks, and low-income communities into the nation's federal housing policy to ensure that the housing market can serve all Americans.

NCLR and the National Urban League submit the following comments for consideration by FHFA in their development of Evaluation Guidance for Scoring the Performance of the Enterprises on their Underserved Markets Plans. While we commend FHFA on this thoughtful approach to evaluating the performance of the Enterprises on their first Underserved Markets Plans, we offer the following general concerns and recommendations:

1. While the current guidance seeks to not only assess the extent to which the Enterprises carry out planned activities and proposed objectives, we are concerned that the proposed points-based scoring system is not consistent for the Quantitative and Qualitative portions. Further, it is unclear how the systems were chosen and why two systems are needed.
    a) We suggest creating a points-based system that is consistent in both the Quantitative and Qualitative portions of the evaluation. By creating consistency and using the same scoring system for both portions, FHFA may be able to strike a balance between providing simplicity and specificity in evaluating the Enterprises' Duty to Serve activities.
2. While the current guidance seeks to determine whether an activity or objective has a meaningful impact on access to credit in any underserved market, we are concerned that the scoring system as it is proposed will not sufficiently motivate the Enterprises to achieve the highest rating.
    b) We suggest that FHFA define what consequences the Enterprises will face should their rating be "Low Satisfactory" or "Minimally Passing."
3. While the current guidance does encourage the Enterprises to be specific in their strategies to have an impact on very low-, low-, and moderate-income communities, the designation of very low-, low- and moderate- income communities as targets for plan objectives and activities alone may not have a meaningful impact.
    c) We suggest that FHFA require the Enterprises to use the Duty to Serve income definitions[7] to specifically identify the income thresholds by "x% of AMI (Area Median Income)" and not the general "very low-income" as targets for Plan activities and objectives.

Chapter 1: Developing Underserved Markets Plans: Contents and Considerations

Plan Contents

3. Activities and Objectives

The current guidance appropriately directs the Enterprises to fully describe the specific activities they will undertake and related objectives, and that a plan must include activities in each underserved market that serve all three Duty to Serve income categories in each year of the Plan.

3A. Activities

The current guidance explains that the Duty to Serve regulation provides that FHFA may designate one Statutory Activity or Regulatory Activity in each underserved market that FHFA will significantly consider in determining whether to provide a Non-Objection. While FHFA has stated in the draft guidance that it has not made such as designation for the first Plan cycle, **we recommend that FHFA designate the Regulatory Activity, "Support purchase and rehabilitation financing of distressed properties," in the Affordable Housing Preservation Underserved Markets Plan of the Enterprises for significant consideration in the first and future cycles.** Studies[8] point to a severe shortage in the supply of affordable housing that is not keeping up with the demand, especially as household growth will continue to be driven by minority households with low rates of homeownership. By encouraging this activity, the Enterprises may be able to address the need for affordable single-family properties; meanwhile assisting families struggling with a severely delinquent mortgage in their decision to either stay in their home or choose the most appropriate loss mitigation option. The Enterprises could make a meaningful impact on allowing mission-driven, non-profit affordable housing developers to bid on distressed assets to work with homeowners to work out a reasonable solution, or rehabilitate vacant distressed assets at levels of affordability that allow new homeowners to invest in their communities and help stabilize their neighborhood. Indeed, this activity will require more time and effort to make an impact on the underserved market.

3B. Objectives

"SMART" Criteria

We agree with FHFA's guidance to ensure that the Enterprises' proposed objectives are strategic, measurable, realistic, time-bound, and tied to an analysis of market opportunities. However, we would like to make recommendations for the "strategic" and "measurable" criteria, establishment of measurable baselines for all evaluation areas, as well as the analysis of market opportunities.

Strategic. For the objective to be strategic in meeting the needs of the underserved market and achieve an impact, the Enterprises should describe how their activities will specifically target very low-, low-, and moderate-income communities within the underserved market, and consider how to assess the income thresholds in different regions of the country.

- **Example**: Household income and area median income will vary significantly among markets located in different geographic regions of the country. For instance, a low-income household in a higher-cost, metropolitan area may not necessarily live within the same income range or threshold as a low-income household in a rural area. FHFA can evaluate the Enterprises on their approach to target households and areas according to how the objectives target income thresholds defined by the Duty to Serve rule in the underserved markets. For instance, instead of reviewing objectives that are targeted to increase loan purchases from lenders who originate loans to households defined as "low-income," FHFA can evaluate an Enterprise's approach to providing greater liquidity in the Affordable Housing Preservation market by evaluating the objectives that designate a number of purchases of loans made to households living below 60% AMI of a specified market.

- **Example: Loan products and purchases that target families earning below 80% or 60% of AMI.** Affordable housing products that incorporate more flexible underwriting guidelines, pre-purchase housing counseling, and credit enhancements including down payment assistance. In the early 1990s, NCLR partnered with Fannie Mae and First InterState Bank to design and implement one of the earliest of such pilot projects. In conjunction with the Arizona Housing Alliance, a coalition of NCLR Affiliates, a model called "Home To Own," was implemented. This pilot provided mortgages to nearly 500 families, all of whom earned below 80% of AMI, with half going to families earning below 60% of AMI. In addition, the Home To Own portfolio of mortgages performed very well nearly three years after origination, demonstrating a default rate of approximately 1%, three percentage points lower than the overall industry average for delinquencies at the time.

Measurable. Under the current evaluation guidance, the Enterprises are required to provide both the measurable target for the objective and a measurable baseline representing recent performance by the Enterprise. They are not required to establish a baseline for outreach and loan product objectives. While the activities under these objectives are likely to be procedural in nature, we recommend that the Enterprises establish a baseline for outreach and loan product objectives so that FHFA may be able to evaluate to what extent the Enterprises are meeting the needs of the underserved market and measure the achievement of the intended impact, and the responsiveness of the activities to the market need.

- **Example**: The Enterprises could include in their Plans as a baseline the number of contacts with community-based organizations, including housing counseling agencies, or outreach events they aim to have with community-based organizations, lenders, or realtors who serve the target underserved market.
- **Example**: While the Enterprises have model loan products, such as the 97% LTV products, with features that allow lenders to adopt and use them to target underserved markets, establishing a baseline for the Enterprises provides an opportunity for them to innovate the features of the loan product and measure the performance of such innovations within specific underserved markets. As an example, the Enterprises could include a baseline of product features such as down payment assistance, housing counseling, different credit scoring models (FICO Score XD,[*] Vantage Score[†]), insurance and insurance rate adjustments. Understanding the loan product features, variances or outreach mechanisms attempted, as well as which had an effect and which had no effect,

[*] FICO is the company that developed FICO® Score XD, which leverages alternative data sources to give issuers an opportunity to assess otherwise unscorable consumers; see more at http://www.fico.com/en/products/fico-score-xd.

[†] Vantage Score is the company that developed advanced modeling techniques based on a broader and deeper set of credit file data; see more at https://www.vantagescore.com/.

can inform future objectives and improve the efficacy and efficiency of the Enterprises' future Plans.

Tied to Analysis of Market Opportunities. The current guidance appropriately requires that the Enterprises explain how the objective meets one or more of the market opportunities the Enterprise analyzed and identified in that underserved market. FHFA should consider requiring the Enterprises to identify the models, methods, and data sets used for the analysis so they can evaluate and replicate their performance data.

3C. Extra Credit-Eligible Activities

An Enterprise may receive extra Duty to Serve credit for activities that are particularly challenging to accomplish in an underserved market or that serve a part of an underserved market that is relatively less well-served.

Residential Economic Diversity Activities. In the current guidance, FHFA outlines proposed criteria for state or local Qualified Allocation Plan (QAP) definitions of high opportunity areas that would be eligible for purposes of setting objectives related to residential economic diversity.

Question for Public Input, Chapter 1, Question #1

Which state or local QAPs include definitions of high opportunity areas that meet these criteria?

- We believe that Residential Economic Diversity activities should explicitly account for race. These activities and objectives could be guided by existing racial equity assessments and the Fair Housing Act, such as The Opportunity Collaborative's Fair Housing Assessment,[9] carried out by stakeholders in the Baltimore metropolitan region in Maryland.
- An additional source for suggested criteria can be found in an exercise of mapping opportunity in the Baltimore metropolitan region.[10]

Plan Process

Under the current guidance, the Enterprises may submit requests to FHFA to modify their Plans annually, and the request for a modification is subject to FHFA non-objection. In addition, FHFA may allow the Enterprises to identify and treat certain information and data as confidential and proprietary in their Plans, and may allow this to be omitted from the proposed Plan posted for public input. We offer comments on both aspects of the Plan process.

Modifications. FHFA should minimize opportunities the Enterprises can take to decrease or eliminate activities in the middle of a Plan year, in order to prevent disruption of Plan activities that are being executed by the Enterprises and to the extent that doing so would affect the underserved markets in a negative manner. The Enterprises should consider requesting public input from the underserved market that the Enterprise is requesting to be eliminated or modified. For example, if an Enterprise includes outreach, surveys, or direct engagements with low-income households as activities to be carried out to meet any plan objective, it would be disruptive to halt the activities as they are being carried out. To maintain transparency and trust for future endeavors in the underserved market, FHFA should direct the Enterprises to seek public input from stakeholders and community members in the underserved market where activities are being modified or eliminated, particularly when these groups are being engaged in or affected by outreach activities.

Treatment of Confidential or Proprietary Information and Data. FHFA should define and make available to the public the categories of data that are considered confidential or proprietary to the Enterprises. In addition, FHFA could consider making this information available through a FOIA request.

Chapter 2: Evaluation Process for Scoring Enterprise Performance

Step One: Quantitative Evaluation

Question for Public Input, Chapter 2, Question#1

Should FHFA make partial credit available for objectives that are not fully accomplished?

- Under Step One of the evaluation process, FHFA will conduct a quantitative evaluation of an Enterprise's performance under its Plan based on the extent to which the Enterprise accomplished each of its Plan's objectives. While benefit and motivation to carry out an objective could certainly be enhanced by making partial credit available, FHFA should consider what conditions and features of the Plan evaluation would encourage or motivate the Enterprises to accomplish objective or accomplish a substantial amount (three-quarters or more).

Feasibility

According to the current guidance, if underserved market conditions or circumstances outside of an Enterprise's control interfere with its ability to accomplish an objective, the Enterprise may request that its performance under that objective be disregarded by FHFA in evaluating the Enterprise's performance in the applicable underserved market for that year. If FHFA approves such a request, the Enterprises should report the objectives that were not evaluated and the reason in the next quarterly report to FHFA. The next quarterly report should also include a summary of the circumstances surrounding any incomplete activities in the end of the year report to FHFA. FHFA should consider an appropriate timeline for the Enterprises to make these requests. For example, if an Enterprise determines that rising interest rates or a lack of stakeholder or lender participation creates barriers to achieving an objective, the Enterprise should, within 30 days of recognizing the objective will not be feasible, report this to FHFA for consideration. FHFA should not permit the Enterprises to declare an objective infeasible at the beginning of or during the evaluation period.

Step Two: Qualitative Evaluation

Question for Public Input, Chapter 2, Question #3

Has FHFA clearly articulated the implementation and impact criteria in a reasonable way in Appendix B?

- According to Appendix B, FHFA will assign a score from 0 to 50 for each objective, using the impact and implementation evaluation criteria specified in a chart. The chart details the standards for assigning performance scores for objectives after a Plan year concludes. While scores 0, 10, 30, and 50 in the chart in Appendix B provide clear definitions of the measured impact, scores 20 and 40 as currently defined are vague and may not be necessary for the purpose of this Step in the evaluation. The definitions corresponding to each score (i.e. 10-minimal, 30-meaningful, and 50-comprehensive) are not specific enough to motivate an Enterprise to strive to achieve a 50 versus a 30 or a 30 versus a 10. FHFA should consider including an example, as it does with the quantitative criteria.

Question for Public Input, Chapter 2, Question #4

Should FHFA assign individual scores at the objective level as proposed under Step Two, or should FHFA instead assign a single score under Step Two for all actions undertaken by an Enterprise in each underserved market?

- Assigning individual scores at the objective level might provide the Enterprises with more opportunities to increase or improve their score overall. FHFA should consider ways to balance clear guidelines with minimizing complexity to ensure that the Enterprises not only be motivated to perform and accomplish their objectives but also buy into the evaluation process. FHFA could consider providing scenarios under which an Enterprise's performance receives a 10, 30, or 50, just as FHFA did with Step One.

Question for Public Input, Chapter 2, Question #5

FHFA proposes to create concept scores at the Plan development stage which would then serve as a guide for assessing the achievements toward objectives at the evaluation stage. Is this proposal an effective approach? When should FHFA share a preliminary concept score with an Enterprise?

- It would be appropriate for FHFA to create concept scores at the Plan development stage, which would then serve as a guide for assessing the achievements toward objectives at the evaluation stage.

Question for Public Input, Chapter 2, Question #6

Should FHFA weight objectives by evaluation areas? Has FHFA proposed to weight the evaluation areas appropriately?

- We believe it is appropriate for FHFA to weight objectives by evaluation areas. The Enterprises have a mission to provide adequate liquidity in the mortgage market, and to

provide a secondary market for lenders of various sizes. For this reason, objectives that result in an increase in Loan purchases in underserved markets should be given more weight in the evaluations. We suggest the following weight assignments:
a. Loan purchase: 30
b. Loan product: 25
c. Outreach: 20
d. Investments and grants: 25

Step Three: Extra Credit Evaluation

Under Step Three of the evaluation process, FHFA will award Duty to Serve extra credit for certain eligible activities that FHFA has identified as particularly challenging or as serving part of an underserved market that is relatively less well-served.

Question for Public Input, Chapter 2, Question #7

Has FHFA selected appropriate activities for which to award extra credit?

- Appropriate activities in the Rural Market, under Regulatory Activities 1 and 2, should consider high needs rural regions and populations, such as immigrants and low-income communities that are targeted by predatory lenders and areas without existing strong consumer protections. The Enterprises should consider research that has been offered by stakeholders in the earlier Recommendations process or conduct their own research to understand how activities that enhance consumer protections, such as increasing partnerships with housing counseling and pro- or low-bono legal services could be expanded through these Regulatory activities.

Question for Public Input, Chapter 2, Question #8

Has FHFA appropriately limited extra credit only to those objectives achieving a Step Two final score of at least 40?

- We recommend that extra credit be made available for all scores. FHFA could consider the feasibility of all the objectives identified by the Enterprises as a benchmark, rather than the weighted concept score, for granting extra credit.

Converting the Results of the Evaluations into a Final Rating

After FHFA has determined under Step One that an Enterprise will receive a passing score for a particular underserved market, FHFA will adjust the Enterprise's Step Two overall performance score under Step Three, as applicable, to determine which of the four passing ratings to award the Enterprise for that underserved market: Minimally Passing, Low Satisfactory, High Satisfactory, or Exceeds.

Question for Public Input, Chapter 2, Question #9

Are the cut-offs for determining whether an Enterprise qualifies for each of the four passing ratings appropriate?

Four proposed passing ratings:
Minimally Passing: <18
Low Satisfactory: 18-26
High Satisfactory: 26-36
Exceeds: ≥36

- FHFA should consider how this evaluation process compares with the Community Reinvestment Act (CRA) examination[11] guidelines. In the CRA exam, there are explicit legal consequences that a bank faces if it does not perform to a certain degree, and this is one motivation for the bank to buy into the examination and be held accountable to their score. FHFA should clearly outline the consequences of each score so that the advantages of receiving one over the other are clear. FHFA should consider how the Enterprises could be encouraged or motivated to perform towards a higher score rather than Low Satisfactory or Minimally Passing.

Thank you for the opportunity to present our comments. We believe that the Draft Evaluation Guidance is a step in the right direction for evaluating the performance of the Enterprises on well-defined activities and objectives defined in their respective Underserved Market Plans. However, we believe the evaluation guidance may be improved with some modification in order to provide motivation for the Enterprises to perform in a meaningful way. Please feel free to contact Lindsay Daniels, Associate Director, Economic Policy at ldaniels@nclr.org or Agatha So, Policy Analyst, Economic Policy at aso@nclr.org with the NCLR, or Kyle Williams, Director of Financial and Housing Policy at kwilliams@nul.org with the National Urban League, if you would like to discuss our recommendations in greater detail.

Agatha So
Lindsay Daniels

National Council of La Raza
Washington, DC

Kyle Williams

National Urban League
Washington, DC

[1] Janis Bowdler and Julia Gordon, *Making the Mortgage Market Work for America's Families* (Washington, DC: Center for American Progress, 2013).

[2] Joint Center for Housing Studies, *The State of the Nation's Housing 2016 (*Cambridge, MA: Joint Center for Housing Studies, 2016).

[3] Jesse Bricker, et al., *Changes in U.S. Family Finances from 2007-2010: Evidence from the Survey of Consumer Finances*. Federal Reserve Bulletin, The Board of Governors of the Federal Reserve System. Washington, DC, 2012, https://www.federalreserve.gov/pubs/bulletin/2012/PDF/scf12.pdf (accessed June 5, 2017).

[4] Neil Bhutta and Daniel R. Ringo, *Residential Mortgage Lending from 2004-2015*. Federal Reserve Bulletin, The Board of Governors of the Federal Reserve System. Washington, DC, 2016, https://www.federalreserve.gov/pubs/bulletin/2016/pdf/2015_HMDA.pdf (accessed June 5, 2017).

[5] Debbie Gruenstein Bocian, Keith S. Ernst, and Wei Li, *Collateral Damage: The Spillover Costs of Foreclosures* (Durham, NC: Center for Responsible Lending, 2012).

[6] Laurie Goodman, Rolf Pendall, and Jun Zhu, *Headship and Homeownership: What Does the Future Hold?* (Washington, DC: The Urban Institute, 2015).

[7] The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, United States Code, title 12, sec. 4502 (1585-88).

[8] Laurie Goodman and Rolf Pendall, "Housing supply falls short of demand by 430,000 units," *Urban Wire*, June 21, 2016, http://www.urban.org/urban-wire/housing-supply-falls-short-demand-430000-units (accessed June 5, 2017); Svenja Gudell, February 2017 Market Report: Inventory Still Low As Home Shopping Season Begins (Seattle, WA: Zillow Group Research, 2017), https://www.zillow.com/research/february-2017-market-report-14557/ (accessed June 5, 2017); and Joint Center for Housing Studies, *The State of the Nation's Housing 2016 (*Cambridge, MA: Joint Center for Housing Studies, 2016).

[9] The Opportunity Collaborative, "Appendix A: Fair Housing Equity Assessment," http://www.opportunitycollaborative.org/assets/Appendix-A-FHEA-Detail-5Sept2014.pdf?536869&x19060 (accessed June 5, 2017)

[10] The Opportunity Collaborative, "Technical Memorandum #2: Measures of Opportunity in the Baltimore Metropolitan Region," http://www.opportunitycollaborative.org/assets/UM-NCSG-Oppty-Mapping-Tech-Memo-2-Sept2013.pdf?&x19060 (accessed June 5, 2017)

[11] Office of the Comptroller of the Currency, "Community Reinvestment Act (CRA) Questions and Answers," https://www.occ.treas.gov/topics/compliance-bsa/cra/questions-and-answers.html (accessed June 5, 2017).