July 17, 2023

The Honorable Sandra Thompson
Director
Federal Housing Finance Agency
400 7th Street SW, 10th Floor
Washington, D.C. 20219

RE: Duty to Serve Rural Listening Session Comments

Dear Director Thompson,

The Housing Assistance Council (HAC) appreciates the opportunity to comment on the impact of Duty to Serve in rural, high needs communities. HAC appreciates the work of the Federal Housing Finance Agency (FHFA) and the Enterprises on Duty to Serve in recent years. The true, yet-untapped potential of Duty to Serve requires the Enterprises to set ambitious goals and to be innovative and proactive in their rural work.

HAC helps build homes and communities across rural America. Founded in 1971, headquartered in Washington, D.C. and working in all 50 states, HAC is a national nonprofit and a certified community development financial institution (CDFI). We are dedicated to helping local rural organizations build affordable homes and vibrant communities. We provide below-market financing, technical assistance, training, and information services. HAC also serves as rural America's "Information Backbone" with leading public and private sector institutions relying on HAC's independent, non-partisan research and analysis to shape policy. Thus, HAC is uniquely positioned to provide comments on Duty to Serve in rural areas.

In brief, HAC would like to focus our comments on the importance of:
- Maintaining USDA Section 515 preservation as a core goal of the rural Duty to Serve Plans;
- Permitting targeted equity investments in CDFIs, which is, in HAC's opinion, the single most impactful action that the FHFA could currently take to improve Duty to Serve outcomes;
- Using, and further refining, the new Colonias Census Tract definition; and

- Meeting rural LIHTC equity investment goals.

USDA Section 515 Loan Purchases

Multifamily rental units financed by USDA through the Section 515 program are an important source of housing in many rural communities. More than 87 percent of all counties have at least one USDA multifamily property. Today, there are nearly 13,000 Section 515 rental properties providing around 400,000 affordable homes to families and individuals across rural America. However, due to federal funding cuts, no new Section 515 housing has been developed in over a decade, and the existing properties are increasingly losing their affordability provisions. Once the mortgage on the property matures, the units lose their rental subsidy and thus their affordability. For many rural communities, these units constitute the only affordable rental housing available. Significant public and private commitment is needed to address this rising crisis. Over 900 Section 515 properties and 21,000 units were lost from the program between 2016 and 2021,[1] demonstrating that the preservation needs of the portfolio are not being met by current funding sources.

The Enterprises invested years of work to reach subordination agreements with USDA to allow for Section 515 purchases as part of their Duty to Serve goals. These subordination agreements have been in place for over a year, but neither Enterprise has yet made any Section 515 purchases (with the exception of one Freddie Mac purchase prior to the current Plan cycle). Furthermore, both Enterprises have at various times proposed removing their already extremely modest Section 515 purchase goals from their Plans, and Freddie Mac has listed Section 515 purchases as "infeasible" in their 2022 Annual Report.[2]

Section 515 preservation deals are complex and time-intensive. HAC has experienced these challenges firsthand in our own preservation work. But the preservation of Section 515 units is critical to rural communities, and must remain a pillar of the Duty to Serve work. Both Enterprises have only

[1] Housing Assistance Council, "Rural America is Losing Affordable Rental Housing at an Alarming Rate: An Update on Maturing Mortgages in USDA's Section 515 Rural Rental Housing Program," 2022, https://ruralhome.org/update-maturing-mortgages-usda-section-515-rural-rental-housing-program/.
[2] "Annual Loan Purchase Narrative Reporting Template: Freddie Mac, Rural Housing, 2022." https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/2022-DTS-Reports/Freddie-Mac/FRE_Rural_MF_Prop_A.pdf

committed to a relatively small number of Section 515 purchases, and we encourage them to reach those targets for 2023.

Equity Investments in CDFIs

Fannie Mae has included in their Plan a goal to explore the feasibility of equity investments in CDFIs, with a focus on Native CDFIs. HAC is very pleased to see Fannie Mae's interest in this area, and it is in line with the recommendations we offered during the FHFA's Duty to Serve Native American Housing Listening Session in July 2022.[3]

In light of this inclusion (and Fannie's inclusion of equity investments for CDFIs engaged in rural single-family markets in their 2022-2024 plan overall), we continue to encourage the FHFA to take this opportunity to approve the use of the equity investment tool.

Permitting targeted equity investments in CDFIs is, in HAC's opinion, the single most impactful action that the FHFA could currently take to improve Duty to Serve outcomes. It would allow community-based nonprofit lenders to bring the power of the Enterprises to markets in which little to no mortgage activity currently occurs, growing new markets for future activity by the Enterprises.

More broadly, targeted equity investments in CDFIs that are already lending for rural housing, manufactured housing, and affordable housing preservation would significantly improve liquidity and the distribution of investment capital for all the Duty to Serve underserved markets. For example, targeted equity investments from the Enterprises could have a significant impact in reversing USDA's Section 515 preservation crisis by providing the capital for CDFIs to make preservation loans. CDFIs have been working in these markets for decades and have the relationships and track record to successfully lend and develop the products and services needed to serve the housing needs of underserved communities. These capable organizations just need additional access to capital and liquidity to turn mortgage deserts into fertile markets for Enterprise activity.

In the statute establishing Duty to Serve, Congress set out "investments" as one of four explicit criteria that FHFA must use in evaluating the Enterprises'

[3] Dave Castillo and David Lipsetz, Housing Assistance Council, to Sandra Thompson, Federal Housing Finance Agency, Washington, DC, July 13, 2022, https://ruralhome.org/hacs-comments-on-duty-to-serve-for-native-american-communities/.

Duty to Serve performance.[4] Because this statutory change applies only to very limited equity investments that are part of the Enterprises' overall strategy to reach Duty to Serve's underserved markets, allowing this controlled investment would unlock massive potential for improved access to capital in the underserved markets without any significant increase in risk. It is time for the FHFA's previous decision on targeted equity investments to be reassessed and we encourage the FHFA leadership team to ask the FHFA general counsel to do so.

We would also encourage both Enterprises to consider the other Native American housing suggestions that HAC submitted during the July 2022 listening session, including loan purchase goals, for future Plan modifications.

Colonias Census Tract Definition

In the United States, the term "colonias" has been applied generally to unincorporated communities located in California, Arizona, New Mexico, and Texas along the U.S.-Mexico border that are characterized by high poverty rates and substandard living conditions. In practical terms, colonias are defined primarily by what they lack, such as potable drinking water, water and wastewater systems, paved streets, and conventional mortgage financing.

Despite being categorized together, colonias vary extensively within the border region, from small clusters of homes located near agricultural employment opportunities to established communities whose residents commute to nearby urban centers. Colonias have varied histories. Some emerged in the last 50 years, but others have been in existence since the 19th century. The unmet need for affordable housing was a key factor driving the demand for homes in colonia developments in both recent and historic colonias.

HAC supports FHFA's new definition of "colonia census tracts" to target efforts by the Enterprises to meet the credit needs of these high-poverty rural areas. The colonia census tract model is based on Colonias Investment Areas, a concept developed by HAC for use by Fannie Mae in meeting its Duty to Serve the colonias.[5] HAC's research makes clear that using census

[4] Housing and Economic Recovery Act of 2008, 12 U.S.C. § 4565(d)(2)(D) (2020).
[5] Housing Assistance Council, *Colonias Investment Areas: Working Toward a Better Understanding of Colonia Communities for Mortgage Access and Finance* (Washington, DC:

tracts containing colonias as a basis for identifying and evaluating colonias activities should not only provide clarity, but also meets the goals of the Duty to Serve statute and regulations. As this new definition is implemented, HAC recommends exploring providing greater weight to Duty to Serve activities in colonia census tracts in rural areas than to those in urban or suburban places, because rural tracts have greater needs.

Rural LIHTC Equity Investments

The Enterprises' return to the Low-Income Housing Tax Credit (LIHTC) equity market as a part of Duty to Serve has the power to boost LIHTC effectiveness in rural areas. However, both Enterprises need to commit to more ambitious rural LIHTC equity investments. Freddie Mac proposes to make only seven rural LIHTC equity investments in 2023, and Fannie Mae has requested a modification to decrease their rural LIHTC equity investment goal substantially this year (from 70 to 20-40).

The need for affordable housing in rural communities has not changed since the current the Duty to Serve Plans were approved. In fact, in 2021, the FHFA recognized the value of the Enterprises' investment in LIHTCs when it raised limits on those investments from $500 million to $850 million annually. Thus, HAC opposes Fannie Mae's request to decrease their rural LIHTC investment goal. Of the over 13,000 properties that received LIHTC allocations from 2006 to 2016, over one quarter were located in census tracts defined by the FHFA as rural. Notably, rural LIHTC properties were substantially smaller (44 units versus 88 units on average) and served a poorer population (94 percent low-income versus 86 percent low-income) than non-rural properties.

LIHTC pricing for developments in underserved, rural areas is often significantly lower, which results in less equity for rural properties. In 2016, a project in Fargo, North Dakota, earned $1.05 per dollar of credits, while a project on the Turtle Mountain reservation located in rural, north central North Dakota garnered a price of $0.82 per dollar of credits. This is in contrast to the $1.20 price that LIHTC credits were able to fetch in cities like San Francisco and New York. While the pricing in this particular example is out of date, the larger rural pricing challenge that it illustrates is still relevant. The Enterprises' role in the rural LIHTC market must combat that inequity.

Fannie Mae, 2020), https://ruralhome.org/reports/understanding-the-colonias-investment-areas/.

While we understand that the Enterprises are waiting for clarification from Treasury on whether they are considered Tax-Exempt Controlled Entities (TECEs) under the Internal Revenue Code, Fannie's retreat from the rural LIHTC market is already having a negative impact on rural areas. HAC has called on Treasury to clarify that the Enterprises are not TECEs, and we hope a clarification will be made in a timely manner. But in the meantime, the Enterprises should continue to be held to the goals they set forth for rural LIHTC equity investments.

Thank you for your time and consideration of these comments. We greatly value our partnership and look forward to continuing to work with FHFA and the Enterprises to address these important challenges.

Sincerely,

David Lipsetz
President & CEO