

Comments on the Duty to Serve (In Response to August 4, 2009 Federal Register Notice requesting comments – closing September 18, 2009)

Definition of Rural

- (1) The Housing Act of 1949 provides a definition of Rural as areas under 20,000 in population. Currently Rural Development / Rural Housing Services operates 20+ programs within rural America, the private firms with whom we partner are familiar with this definition and they have developed their operations to conform to this definition. The definition of rural is codified within the housing act statute. Congress specifically mentioned rural, it didn't mention "non-metro" or "metro" areas, therefore the enterprises should address its focus to rural areas, as defined by the Housing Act of 1949.
- (2) The use of non-metropolitan areas as the definition is causing extreme confusion within the rural communities and within the providers of services to rural communities. The primary reason for these concerns are that small communities that are rural in nature could be "annexed" into a statistical metropolitan area for other purposes, however they still are rural in nature. If we use non metro areas and metro areas as the dividing line for rural, the vast majority of rural communities will be excluded from the definition despite having numerous characteristics that make them rural.
- (3) Because development of rural areas has been the expertise of Rural Development within the Department of Agriculture, the definition should refer back to § 520 of the Housing Act (42 USC 1490), which states, "As used in this subchapter, the terms "rural" and "rural area" mean any open country, or an place, town, village, or city which not ... part of or associated with an urban area and which (1) has a population not in excess of 2,500 inhabitants, or (2) has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or (3) has a population in excess of 10,000 but not in excess of 20,000 and (A) is not contained within a standard metropolitan statistical area, and (B) has a serious lack of mortgage credit for lower and moderate income families, as determined by the Secretary and the Secretary of housing and Urban Development."
- (4) One could argue that Congressional intent was to use this definition when creating the law that created the enterprises' duty to serve.
- (5) Grandfathering – at the time a Rural Housing Service loan, grant or guarantee was made to build, repair, preserve or transfer a housing project the property was in a rural area. As long as the loan, grant or guarantee or other financial assistance provided by Rural Housing Service is still being provided, the property remains "rural" for purposes of the duty to serve underserved markets for enterprises, despite the fact that currently it may not fit the definition of "rural". RHS adopts the position that once a property has RHS financing is remains "rural" despite population changes over time.

Serving Rural Markets – New Construction

- (1) As the preeminent funding program to build and preserve affordable rural housing, the Guaranteed Rural Rental Housing program, the section 538 program should be emphasized by the enterprises. Given the mission of the enterprises, to facilitate a secondary market for mortgages on housing for very low, low and moderate income families, the enterprises should be required to purchase loans guaranteed by the Section 538 program. The Section 538 has struggled the past few years to expand the secondary

market acceptance of the loans it guarantees. Each enterprise should have a specific goal of purchasing at least 5% of the total new construction loans guaranteed by the Guaranteed Rural Rental Housing program in the first year (approximately \$6 to \$7 million each). And the goal should grow to 10% the second year and 15% the third year. This would have several positive impacts on the amount of affordable new construction the first is to lower the effective rate of these loans through a more competitive secondary market for the loans. The second is the attraction of private capital to these rural areas that are so starved for private capital.

- (2) The enterprises must provide marketing assistance to the developers, lenders and other key players in these rural markets. Currently, the only national entity providing marketing assistance is RHS, through the extensive field and state office network. Unfortunately this staff has had very little exposure to the secondary market and how it works. The enterprises should provide periodic training to the RHS field staff in conjunction with the National Office on how Fannie Mae and Freddie Mac work – how their activity impacts the pricing of the loans, the servicing issues and the approved lenders can utilize the Section 538 loan guarantee. In addition, these enterprises need to inform the state and field staff who the Fannie Mae and Freddie Mac approved lenders are in this particular region.
- (3) Since underwriting a rural deal is different than underwriting another type of deal. It is encouraged to have the enterprises work closely with RHS to adapt their underwriting criteria to that of RHS' guarantee programs.
- (4) Suggestive measurement / evaluation criteria; a) measure the amount of affordable housing apartment units in an area (per capita) prior to the enterprises' activity in that region and then measure the number of affordable housing apartment units in an area after the enterprises' activity; b) measure the amount of affordable housing apartment units nationwide (per capita) and compare to specific regions and require the enterprises to concentrate on areas that have the lowest number of affordable housing apartment units as compared to the national average.
- (5) Training to this extensive RHS field staff system to make the thousands of RHS employees already providing affordable housing in their markets aware of the enterprises' activities and to provide them with the tools needed to make the partnership between the enterprises and RHS work.
- (6) Provide analysis of the economic activity planned and occurring in rural markets so RHS can assist in providing workforce housing for those employees being attracted to those economic activities. Given the fact that the Guaranteed Rural Rental Housing program can build affordable housing for moderate income tenants, this program can be highlighted in the enterprises' efforts to attract more capital to these underserved markets. The enterprises should be given additional credit / incentive to purchase loans guaranteed by the Guaranteed Rural Rental Housing program.
- (7) Unlike other affordable housing programs, the Section 538 program does not provide a tenant based subsidy. Despite this lack of tenant based subsidy, the Guaranteed Rural Rental Housing program still has, on average about 50 to 60% of its tenants in the very low or low income range (50% or 80% of area median income). The enterprises should prioritize its funding towards projects that have guaranteed financing because those programs operate on a capitalized assistance level and not an annual tenant subsidy. The Section 538 is the only rural guarantee program to operate in rural America without a tenant subsidy, which means the properties are in greater need of "up-front" funding to build and repair affordable housing.

- (8) Over the past 60 years, Rural Housing Service has directed its programs to address the continuing affordable housing needs of rural communities. Over time these rural communities expand and contract due to employment opportunities migrating and population shifts.

Serving Rural Markets – Preserving Existing 515 Projects

- (1) With over 15,000 apartment properties throughout the country, RHS has been dealing with preservation of this national treasure in several different ways. One way is to bring the section 538 loan guarantee program to assist in the preservation effort. The loans guaranteed by the agency generally are smaller than new construction loans. The enterprises should be required to securitize and/or purchase these preservation loans. All loans guaranteed by the section program are in a first lien position and are over collateralized, and those loans on properties in the 515 portfolio usually contain project based tenant subsidies that further ensure cash flow to pay the principal and interest each month.
- (2) Any property financed using the section 515 program is considered grandfathered as a rural project despite the changes in the demographics. Thus the enterprises should be required to fund transactions utilizing the RHS section 515 program. Ginnie Mae has agreed to accept loans guaranteed by the Section 538 program on existing 515 properties.
- (3) The Section 538 has preserved both existing RD financed debt and non-RD financed debt. One overriding fact exists in all existing affordable housing properties, the lack of funds to perform preventative maintenance. While all affordable housing programs have reserve requirements, the Section 538 program requires a minimum amount of \$1,000 per unit in reserves. As any affordable housing expert will tell you these reserves are not enough to perform preventative maintenance. Because the Section 538 already has a process in place for preservation of affordable housing rural housing AND it has standards for those repairs, etc. the enterprises should rely on the expertise of the RD staff when making financing selections to owners of rural properties.

Affordable Housing

- (1) The enterprises should be required to enter into memorandums of understanding with Rural Housing Services. These memorandums of understanding are agreements that govern the relationship between the agency and the enterprises. These MOUs provide a framework of what each party expects from the other. MOUs are used throughout the government as a mechanism to move programs from each entity, that each independently working towards common goals.
- (2) Another method of measuring the enterprises activity is to measure the number of approved Fannie Mae or Freddie Mac lenders in a state that are active in lending in rural parts of the state. One suggested goal is that each state has at least 3 active approved lenders and that each lender has to have lent to 3 different properties within that state over a 2 year period.
- (3) The loan products that each enterprise should develop should mirror existing lending in these markets. The Section 538, by statute, must guarantee loans with a term of at least 25 years usually the amortization is stretched to 40 years to make the financing affordable.
- (4) The Section 538 program is the one program that has the ability to provide affordable housing for working families that make too much for deep subsidized projects, yet not enough to rent market rate units or to purchase a home. Workforce housing has been a

focus of many community development groups. It is suggested that the enterprises work with the Multi-family housing national office staff to design a product that would assist them with the creation of rental housing that can be used by working families near businesses that are in need of affordable housing for their employees.

- (5) The Guaranteed Rural Rental Housing Program has regulations in place that govern the operation of the program. I would like to see the enterprises to reference 7 CFR 3565 for eligible uses and amenities. Whenever possible the enterprises should refer to the Guaranteed Rural Rental Housing Program's regulations because the affordable housing providers (builders, management agents, and lenders) understand these standards and have been working through these standards for years.
- (6) Rural Development has in place a state office and field office network of personnel that concentrate exclusively on delivering affordable housing to their respective areas. These individuals are extremely knowledgeable of their communities, areas and states. They understand the rents needed to make a project work and they understand the financing structures that are needed to make a project work. Any project that is in a rural area, as defined by Rural Housing Service / Rural Development, and has a notice response AND an acceptable application for Section 538 financing should be given extra consideration by the enterprises.

Consultation with Rural Development

- (1) Since the Multi-family housing area within Rural Development has been financing affordable housing for years, I would suggest that Multi-family Housing provide consultative advice to the Federal Housing Finance Agency to assist it in designing programmatic guidelines to meet the needs of the rural population as Congress intended.
- (2) The Multi-family housing staff has experience with affordable housing funds nationally, on the state level and on a local level. The Multi-family housing staff has helped establish the criteria for these affordable housing funds. The Multi-family housing programs provide more than 500,000 affordable housing units, all of which have restrictive use provisions. Meeting the needs of the very low and low income tenants has been the mission of the Multi-family housing staff they know what works and what does not work. Because of this experience, I suggest that the Multi-family housing staff be included in the design of the enterprises' product development and metrics used to measure their effectiveness.
- (3) With state and area offices in every state, the Multi-family housing staff has worked with every State Housing Finance Agency, with every State's Low Income Housing Tax Credit program, and financed affordable housing in each state.

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