ROC usa™
Resident Owned Communities
BETTER TOGETHER

September 18, 2009

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1700 G Street, NW, 4th Floor
Washington, DC 20552

Submitted via e-mail to RegComments@fhfa.org

RE: RIN 2590-AA27-Duty to Serve Underserved Markets for Enterprises

Dear Attorney Pollard:

This letter is in response to the Agency's Advance Notice of Proposed Rulemaking and Request for Comment Regarding Duty to Serve Underserved Markets for the Enterprises. This follows an earlier letter sent to Deputy Director DeMarco in April of 2009 by ROC USA and in coordination with the members of Resident Ownership Network, LLC ("Network"), a national network of statewide and regional non-profit organizations dedicated to making quality resident ownership of communities a viable for homeowners in manufactured home communities ("MHC").

The 11 affiliated non-profit organizations in Network work in 33 states with homeowners who seek the security of community ownership. Through cooperative and non-profit membership organizations, resident-ownership provides the security that homeownership typically connotes. This expanding sub-sector represents a new opportunity for the Enterprises to both finance resident-owned communities and provide single-family financing in the then secure communities and meet its Duty to Serve. Both new areas of lending will serve the three underserved markets: (1) manufactured housing, (2) preservation of affordable housing, and (3) rural housing.

ROC USA™ and its two subsidiaries, Network, along with the affiliated non-profit technical assistance providers, and Resident Ownership Capital, LLC d/b/a ROC USA Capital, are prepared to work with both Enterprises to facilitate strong, consumer-oriented outcomes and safe and secure lending.

I. UNDERSERVED MARKETS

1. Manufactured Housing

HERA directs that: *"Specifically, the Enterprises are required to provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families with respect to manufactured housing, affordable housing preservation, and rural markets."*

This directive acknowledges that the lending thus far in these areas has been insufficient to meet the needs of the markets and the Enterprises must lead the way as only they can. Leadership squarely focused on market change is needed so that owning a manufactured home on leased land more assuredly delivers one of the homeownership's most basic benefits – security.

When homeowners in MHC have control of the land beneath their homes, where there is aligned ownership interest between the home and the land, the base is set for safe and secure single-family lending. Further, by addressing the titling of MH and lien-holder protections, it is possible for conventional residential lenders to enter the "home in park" market.

One demonstrated way of achieving such an alignment of ownership interests and safe and secure single-family lending is through resident ownership. This structure has been developed and is working in resident-owned communities through a demonstration program launched in 2008 by Fannie Mae in New Hampshire. The entrance of single-family lenders in the traditional chattel market, including the NH Community Loan Fund, NH Housing Finance Authority, and Fannie Mae in the New Hampshire co-op market, has helped lead to a higher percentage of homebuyers securing fixed rate loans, faster home sales, and higher per square foot prices for homes in resident-owned communities compared with those in comparable investor-owned communities. (2005, Carsey Institute, UNH)

ROC USA is the first non-profit scale initiative aimed at making resident ownership and ultimately access to single-family financing available nationwide. ROC USA is a joint social enterprise between the New Hampshire Community Loan Fund, the Corporation for Enterprise Development (CFED) and NCB Capital Impact and grant supported by the Ford Foundation, NeighborWorks America, and Fannie Mae, as well.

The Enterprises can serve all three underserved markets by: 1) financing MHC acquisition by resident corporations; 2) supporting the titling of MH in MHC as real estate; and 3) developing single-family financing products for homes in resident-owned communities where long-term preservation is assured.

a. Multi-family:

Financing Resident Corporations:

First, to include the multi-family products in its Duty to Serve goals, the loans should be made in support of resident ownership that is structured to preserve the community long-term. Resident corporations supported under the Duty to Serve, recognizing the special public sector support of the Enterprises, ought to be committed to long-term preservation of the MHC. Several methods are available to ensure that the MHC is not later sold at a windfall profit to individual members. Permitting such a sale and windfall profit would incentivize the closure and loss of affordable homeownership and be at odds with the goals of the Duty to Serve. A preservation element such as this is routinely met by Limited Equity Co-op ownership models and other non-profit membership entities through dissolution constraints and other mechanisms.

Second, in addressing the financing needs of resident corporation buyers, it's important to understand that resident-owned MHCs have fundamental operating differences from traditional investor-owners of MHCs:

- The operations of resident-owned MHCs are structured on a not-for-profit basis like many other housing cooperatives, condominiums and homeowners associations;
- Resident-owned MHCs operate democratically, on a one-member/one-vote basis, providing all homeowners the opportunity to participate in community governance; and,
- Proprietary leases offered in resident-owned MHCs provide long-term tenure for homeowners and support ongoing homeowner investment in both the home and the community.

These differences require more flexible underwriting than do loans to investor buyers for the following reasons:

1. Because very low, low and moderate income homebuyers and homeowners are the target beneficiaries of the Duty to Serve, it is especially important that underwriting standards for community acquisition loans enable all homeowners to participate in the non-profit membership entity that will own the community. Enabling these communities to be financed with modest membership fees and blanket mortgage loans of up to 110% loan-to-value (LTV) serves this goal best.

Since the Enterprises' need for safety and soundness will mean that they will not provide highly-subordinate capital themselves, the financing structure itself must anticipate subordinate participations and loans to meet the needs of very low, low and moderate income communities. If this is missed, there is a serious risk of producing bifurcated communities of higher-income members who can afford large share values necessary to support traditional LTV levels and low-income non-members who cannot afford shares or share loans. There is strong market evidence that membership open to all regardless of income level is essential to overall economic alignment, the long-term health of a community, and the security of the loan;

2. Loan Terms of 15 to 20 years and amortization periods of 30 to 40 years are important to reduce refinance risk and permit the not-for-profit ownership entity to control future lot rents for its members, preserving affordability for its members;

3. Apply a minimum debt service coverage ratio requirement of 1.15 to 1.00, or better, on Enterprise financing. This standard is consistent with the underwriting of other affordable multi-family housing, cooperative housing and non-profit owned housing. For co-ops, because net profits are taxable, members – who will pay increased monthly lease fees when needed – are not motivated to increase fees pre-maturely simply to pay more in taxes. Beyond basic reserves, we have found multi-family type debt coverage to work extremely well;

4. Apply a minimum membership threshold of 51 percent at closing to provide for stable ownership entities while recognizing that homeowners in the conversion process make membership decisions both pre- and post-closing due to a variety of factors. The voting rights and proprietary nature of lot leases offered to members in resident-owned MHCs provide significant incentives for homeowners to become members. Twenty-five years of market experience with resident-owned MHCs in New Hampshire, with 93 such communities having been financed without a loss, provides great evidence that healthy and sustainable communities are developed. Customarily, 90 percent membership levels are typically reached a few months after a community is acquired. To facilitate the acquisition of MHCs by homeowners on a national scale within the timeframes expected by sellers, a threshold of 51 percent is sufficient. This threshold does not diminish the strength of any given community as many homeowners become members shortly after closing when they are sure the conversion to resident ownership has been accomplished;

5. Allow for direct loan participations with other originating lenders of first mortgage community acquisition loans when such originating lenders meet Enterprise DUS, or other similar, standards. The Enterprises' exposure would be limited to 90 percent LTV, or less, with the originating lender subordinating its

retained portion of the loan to the Enterprise's while funding up to 110% LTV; and,

6. Underwrite communities based upon overall quality of the community's infrastructure, management plan, and cash flow strength. Do not use the number of "double-wide" homes as a threshold criterion otherwise the communities with the largest numbers of low-income homeowners will not meet the threshold requirement and will not be provided an opportunity to make their case based upon much more critical underwriting criteria.

We offer these underwriting standards as ones needed the greatest flexibility in order to serve low-income homeowners successfully. Over 100 resident-owned communities serving over 6,000 homeowners have been financed applying these standards on projects completed by Certified Technical Assistance Providers in ROC USA Network. Not a single loan has been lost or charged off. These standards are market-proven through the past 25 years and on over $150MM in originations.

Resident ownership dovetails perfectly with Duty to Serve goals by preserving the affordable communities that so many very low and low-income homeowners in suburban and rural areas rely upon. By aligning the ownership interest between home and community, homeowners directly benefit from ownership, improvements and self-determination. Resident ownership is flourishing in several states and is poised to flourish in many more.

b. Titling:

Titling of homes as real estate does three very important things for homeowners: 1) it acknowledges that these are homes, not vehicles; 2) it allows them to be financed as real estate opening the potential for conventional single-family mortgage lending and flow business for the Enterprises; and 3) it extends consumer protections found in the single-family mortgage market that are not found in the chattel market, including RESPA closing protections and foreclosure protections.

The Uniform Laws Commission of the American Bar Association is currently reviewing a proposal to create Uniform Titling of Manufactured Housing law. A stakeholders meeting is scheduled for September 21, 2009 at the American Bar Association in Washington, DC. The Enterprises could support these efforts.

For an in depth discussion of titling, see:
http://www.cfed.org/imageManager/_documents/mh_realproperty.pdf.

c. MH single-family financing for homes in resident-owned communities:

In New Hampshire, where resident-ownership has 20 percent market share and homes are titled as real estate, Fannie Mae, USDA, and the state housing finance authority have joined with the NH Community Loan Fund, a CDFI serving New Hampshire and a member of ROC USA Network, to finance homes in resident-owned communities with conventional single-family mortgage loans.

Fannie Mae developed its pilot program by adapting their single-family MH product available to MH on fee simple land and using project approval elements adapted from their PUD/Condo/Cooperative lending programs. The result is a new MH home loan product for homes in resident-owned communities which serves all three of the Duty to Serve goals. This demonstration can be expanded by the Enterprises nationally where resident-ownership exists and can be built. Clearly, the first stage is developing more resident-owned communities along with expanded work to extend single-family lending.

2. Preservation of Affordable Housing

Affordable housing preservation would also be served by multi-family lending to resident-owned communities. At the time of loan closing, we believe that the low-income benefit requirement ought to be consistent with the LOW-INCOME HOUSING GUIDELINES, set forth in Rev. Proc. 96-32, Released: May 1, 1996 which was published on May 13, 1996 at 26 CFR 601.201: Rulings and determination letters.

Although not every community will meet this low-income benefit criterion, it is the requirement that other 501(c)(3) co-lenders and participants will follow.

In order to meet the preservation goal, the multi-family MHC loan should not have to involve a subsidy program. The housing and its self-sufficient owners should not be penalized for a previous lack of subsidy.

The reward for the Enterprises needs to be greatest when they support communities where the preservation mechanism is long-term and the low-income benefit, at the time of closing, meets the criteria.

3. Rural Housing:

We agree with the comments of the Housing Assistance Council on the definition of "rural" with respect to using USDA Rural Development's definition of eligible areas for affordable housing and community development programs. The definition generally includes rural towns with no more 20,000 in population.

II. Mechanism for Evaluation of the Enterprises

In determining whether the Enterprises have complied with the Duty to Serve underserved markets, we make the following comments on each test:

Loan Product Test: The Loan Product Test requires evaluation of the Enterprise's *"development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each."* A new loan product for homeowners to purchase their communities is an integral market need. ROC USA Capital has begun the work of developing such a product with Fannie Mae and welcomes an opportunity to work with either or both GSEs toward the perfection and execution of a product. The extent to which this new product can be developed and launched within six months of the Duty to Serve should be measured and credited.

Outreach Test: The Outreach Test is *"the extent of outreach [by the Enterprises] to qualified loan sellers and other market participants"* in each of the three underserved markets. The Enterprises should only get credit under this test if their products reach new participants not previously reached, or are activities designed to make outreach to those previously unreached. This could involve efforts to design a product to reach new participants and/or grant monies spent to reach new participants.

Purchase Test: The Purchase Test requires FHFA to consider *"the volume of loans purchased in each of such underserved markets relative to the market opportunities available to the enterprise"* without setting quotas. The Enterprises should get volume credit for their activities which meet the criteria by setting a credit for volume. As well, the Enterprises should receive credits for each home-site preserved when they purchase or make a loan to a resident-owned community. For instance, if the Enterprise finances a 250-site community, they would score credits for each site preserved. Further, they ought to receive additional credits on a per site basis under the Rural and Preservation Goals if it meets those definitions. Meeting all three underserved markets ought to offer the Enterprises a significant premium.

Grants Test. The Grants Test requires evaluation of *"the amount of investments and grants in projects which assist in meeting the needs of such underserved markets."* The Enterprises ought to consider grants and loans to non-profit organizations which are in a variety of ways supporting the alignment of ownership interests between home and land and the ripening of the market for safe and secure single-family lending. When these grants and loans can be associated with communities which meet the Rural and Preservation Goals, these market making investments ought to receive substantial credit. As the Enterprises are directed to be leaders in these underserved markets, they should receive additional credit for start-up grants and grants that assist the Enterprises in reaching new participants and developing or participating in new products.

Sizing the Market: The Purchase Test requires that the volume of loans purchased in each underserved market be evaluated *"relative to the market opportunities available to the enterprise."* A market analysis for each market is required before benchmarks can be set however we support the practice of measureable outcome-based goals. We agree that the Enterprises' performance in a specific underserved market could be evaluated based on their purchases in previous years.

Evaluating Compliance: We agree that a rating method is needed.

We believe that the four tests need not be given equal consideration. Initially, the Outreach, New Loan Product, and Grants Tests should count more than the Purchase Test. As stated in the Notice, *"the ratings would also take into consideration the overall effort and effectiveness of the Enterprise's service to the underserved market, its capital and portfolio positions, and the condition of the particular underserved market, which could vary from year to year."* The test that the HERA legislation directed is to measure the extent to which the new activity provides leadership to these underserved markets. Leadership often requires innovation. As Albert Einstein, once said, "[w]e can't solve problems by using the same kind of thinking we used when we created them."

The Enterprises can foster stronger and more stable homes through resident ownership. Several years ago, Fannie Mae labeled its entry into manufactured housing as a "seeking to transform the market." We encourage them to do more under this Duty to Serve and for Freddie Mac to join, as well.

Supporting efforts to expand resident ownership has been demonstrated to improve conditions for single-family lending and strengthen and stabilize entire communities. Homes can then be improved or replaced, infrastructure improved and the true realization of homeownership obtained by owners of MH.

Not all resident ownership is alike, however, and the Enterprises need to work on developing a set of criteria for evaluating the types of resident ownership that meet the Duty to Serve. High share value co-ops can leave low-income households behind as non-members and ultimately bifurcates communities. The purchase and later sale of a community for personal gain fails to preserve the affordable community and undermines a basic goal of the Duty to Serve. Conversion to resident ownership without a mechanism to support ongoing technical assistance to the community to ensure its success is equally short sited. A standardized approach to resident ownership that is consistent with Duty to Serve goals is an essential starting point for the Enterprises.

ROC USA, the members of the ROC USA Network and ROC USA Capital are on the ground and working with homeowners today. We stand ready to expand efforts with support under the Duty to Serve and to provide opportunities for those who own MH to attain stable and appreciating homeownership. We support the implementation of

Duty to Serve and hope to be active partners with the FHFA and the Enterprises as you implement these goals.

Please feel free to contact me or Cheryl Sessions, In-house Counsel & Director of Policy, at 603-856-0761 or at csessions@rocusa.org with any questions or insights. Thank you.

Very truly yours,

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