



By Electronic Submission to www.fhfa.gov/open-for-comment-or-input

December 2, 2022

Clinton Jones, Esq.
General Counsel
Attention: Comments/RIN 2590-AB22
Federal Housing Finance Agency
400 Seventh Street, S.W.
Washington, DC 20219

Re: Notice of Proposed Rule and Request for Public Comment concerning Colonias under Duty to Serve Rule, RIN 2590-AB22

Dear Mr. Jones:

Fannie Mae welcomes the opportunity to comment on the Federal Housing Finance Agency’s (“FHFA”) proposed rule to amend its duty to serve rule with regard to colonias (“Proposed Rule”).¹ The Proposed Rule aims to facilitate the ability of Fannie Mae and Freddie Mac (the “Enterprises”) to increase liquidity in these underserved communities by (i) adopting a census tract-based methodology for identifying colonias under the duty to serve rule, and (ii) including all census tracts that contain a colonia in the rule’s definition of “rural area.” Fannie Mae strongly supports these proposals, which we address below in reverse order. We also recommend an effective date for the final rule.

I. Colonias and Rural Areas

The Housing and Economic Recovery Act of 2008 (“HERA”) established duty to serve obligations for the Enterprises to address both single-family and multifamily financing needs benefitting very low-, low- and moderate-income residents in specific underserved markets, including “rural areas.”² Neither the legislative history of HERA nor the Act itself refer to colonias; however, the term is defined in the Cranston-Gonzalez National Affordable Housing Act of 1990, which informed the subsequent consideration and inclusion of colonias in the duty to serve context. Under this definition, a colonia is any identifiable community that:

- is in the State of Arizona, California, New Mexico, or Texas;
- is within 150 miles of the Mexican border;
- *is outside any standard metropolitan statistical area (“MSA”) with a population exceeding 1,000,000;*
- is impacted by objective criteria such as a lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and
- was in existence as a colonia before November 28, 1990.³

The proposal to allow the Enterprises to consider colonias for duty to serve credit under the rural areas underserved market, regardless of whether they are within or outside an MSA, is not new. When FHFA first proposed a duty to serve

¹ 87 Fed. Reg. 60331 (October 5, 2022).

² 12 U.S.C. § 4565.

³ 42 U.S.C. § 1479(f)(8) (emphasis added).

rule in 2010, FHFA requested comments on whether colonias should be included in the definition of “rural area” and how to define colonias.⁴ Fannie Mae’s comment letter dated July 22, 2010 supported the inclusion of colonias but, citing “operational challenges,” recommended against the inclusion of colonias that did not meet the U.S. Department of Agriculture’s definition of “rural area.” A final rule did not result from the 2010 proposed rule.

When the duty to serve rule was finalized in 2016 (following a second round of notice-and-comment rulemaking), the term “colonia” was defined as “an identifiable community that meets the definition of a colonia under a federal, State, tribal, or local program.”⁵ However, to be eligible for duty to serve credit under the final rule, Enterprise activities related to housing in colonias must be located in a geographic area that also meets the rule’s definition of “rural area.”⁶

Fannie Mae shares FHFA’s concern expressed in the Proposed Rule that the current duty to serve rule’s definition of “rural area” has excluded a “large share” of colonias from benefiting from the rule.⁷ FHFA notes in the Proposed Rule that, based on 2020 census data, less than one-half of all census tracts that contain colonias are located outside of an MSA and meet the duty to serve “rural area” definition.⁸ Accordingly, Fannie Mae supports FHFA’s proposal to revise this definition to include all colonia census tracts (and, therefore, all colonias), regardless of location. We believe that the sorts of “operational challenges” in market sizing that Fannie Mae cited in 2010 as a basis for not supporting the additive approach that FHFA now proposes are resolved by the Proposed Rule’s “colonia census tract” methodology for identifying duty to serve-eligible colonias, discussed further below.

II. Colonia Census Tracts

In the 2016 final duty to serve rule, “rural area” was defined by means of census tracts, while the term “colonia” was defined as “an identifiable community [within a rural area] that meets the definition of a colonia under a federal, State, tribal, or local program.” In adopting this reciprocity-based definition, FHFA acknowledged the “data challenges” that existed in identifying all of the census tracts that contain colonias, and encouraged the Enterprises to engage with researchers, lenders, and housing leaders to develop more granular data.⁹ As explained in the Proposed Rule, Fannie Mae worked with the Housing Assistance Council (“HAC”) to conduct a comprehensive review of colonias,

⁴ 75 Fed. Reg. 32099, 32109 (June 7, 2010).

⁵ 81 Fed. Reg. 96242, 96293 (December 29, 2016). FHFA explained that it chose this definition “in order to incorporate certain elements of the definition used by the Cranston-Gonzales National Affordable Housing Act ... while also providing a broad scope for Enterprise activities, including the purchase of mortgage loans, in colonias.” *Id.* at 96275.

⁶ See 12 C.F.R. § 1282.1 (definition of “high-needs rural regions”) and § 1282.35(c)(1).

⁷ 87 Fed. Reg. at 60335.

⁸ *Ibid.*

⁹ 81 Fed. Reg. at 96276.

culminating in a report published in November 2020 (the “HAC Report”).¹⁰ Using 2010 census data, the report identified 446 census tracts containing colonias in Arizona, California, New Mexico, and Texas, comprising approximately 6 percent of the U.S.-Mexico border region’s census tracts and containing approximately 2.5 million people.¹¹ Based on this research, the HAC Report recommended the use of census tracts that contain a colonia as the relevant geographic unit for purposes of determining eligibility for duty to serve credit under the rural market.¹² As the HAC Report noted, this approach aligns with most of FHFA’s duty to serve geographies under the rural and other underserved markets.¹³

Fannie Mae concurs with FHFA’s statement in the Proposed Rule that the use of census tracts will enhance the ability of both the Enterprises and lenders to identify lending and outreach activities in areas containing colonias that may be eligible for duty to serve credit.¹⁴ Objective, definitive geographic standards, like those used to delineate other rural areas, would eliminate the potentially inconsistent, and inherently uncertain, conclusions by lenders seeking to identify colonias under the current duty to serve rule. Moreover, by focusing on the common indicia of, and challenges facing, colonias, irrespective of whether a community is in a rural, urban, or suburban setting, the Proposed Rule will aid Fannie Mae’s efforts to address the lower incidence of mortgage lending seen in colonias along the U.S.-Mexican border. Accordingly, we encourage FHFA to adopt as final the changes to the duty to serve rule contained in the Proposed Rule.

III. Effective Date

Fannie Mae notes that the Proposed Rule does not specify an effective date for a final rule implementing the changes proposed. As FHFA is aware, the Enterprises are each evaluated under the duty to serve rule on a calendar year basis. Because the Proposed Rule has a December 5, 2022, deadline for comments, any final rule will not be published until late 2022 at the earliest. Accordingly, Fannie Mae encourages FHFA to consider invoking its “good cause” authority under the Administrative Procedure Act to make the final rule effective as of January 1, 2023.¹⁵ This would avoid the administrative challenge of applying two different definitions of “high-needs rural region” and “rural area” during a single evaluation period.

¹⁰ Housing Assistance Council, “Colonias Investment Areas: Working Toward a Better Understanding of Colonia Communities for Mortgage Access and Finance” (November 2020), available at <https://www.fanniemae.com/media/37566/display>.

¹¹ HAC Report at 3-4. HAC subsequently provided information to FHFA using 2020 census data, which reflected an increase in the number of colonia census tracts to 577. 87 Fed. Reg. at 60335.

¹² HAC Report at 42-43.

¹³ HAC Report at 14.

¹⁴ 87 Fed. Reg. at 60335.

¹⁵ See 5 U.S.C. § 553(d)(3) (requiring publication of a substantive rule to be made not less than 30 days before its effective date, except “for good cause found and published with the rule”).

Clinton Jones, Esq.

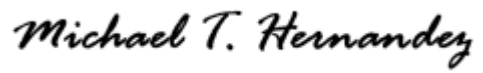
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If you have questions regarding the matters addressed in this letter, please contact the undersigned at 202-752-1234.

Sincerely,

A handwritten signature in black ink that reads "Michael T. Hernandez". The signature is written in a cursive style and is enclosed within a thin black rectangular border.

Michael T. Hernandez

Vice President

Engagement & Impact