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December 2, 2022

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

Re: Enterprise Duty to Serve Underserved Markets Amendments
Colonia Census Tract Definition

Dear Mr. Jones:

The Housing Assistance Council (HAC) appreciates this opportunity to submit comments in response to the October 5, 2022 Notice of Proposed Rulemaking (NPRM) on the Enterprise Duty to Serve Underserved Markets Amendments published by the Federal Housing Finance Agency (FHFA). HAC is a national nonprofit organization that helps build homes and communities across rural America. Since 1971, HAC has provided below-market financing for affordable housing and community development, technical assistance and training, research and information, and policy formulation to enable solutions for rural communities across the country.

HAC has conducted significant research on housing finance, including numerous aspects of Fannie Mae's and Freddie Mac's statutory Duty to Serve Underserved Markets. The regulatory change under consideration, in fact, is based on HAC research for Fannie Mae. Thus HAC is well positioned to comment on this proposal.

HAC generally supports FHFA's proposed definition and use of "colonia census tracts" to target efforts by Fannie Mae and Freddie Mac (the Enterprises) to meet the credit needs of these high-poverty rural areas. As the NPRM explains, 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.¹ HAC's research makes clear that using census tracts containing colonias as a basis for identifying and evaluating colonias activities would not only provide clarity, but would also meet the goals of the Duty to Serve statute and regulations.

The key points made in this comment are:

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- Census tracts are the best available geography for a revised colonia definition, as HAC's research has demonstrated, and HAC supports FHFA's proposal to base its definition on tracts.
- Focusing activities in the places FHFA identifies as colonias census tracts would meet the goals of the Duty to Serve requirement.
- Alternative definitions have proven to be too broad or too difficult to use.
- HAC recommends 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.
- The colonias census tract database should be updated more often than every ten years if interim changes warrant.

Colonias Need Mortgage Credit

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.² 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.³

Colonias largely resulted from lax land regulations, particularly over the last few decades.⁴ For much of the 20th century, county governments lacked the power to regulate the subdivision of land that lies outside the jurisdiction of city governments. Without these controls in place, landowners were able to subdivide and sell their property through a range of methods without the necessary infrastructure.⁵

Also impacting the proliferation of colonias, particularly in Texas, was the contract for deed system. Through a contract for deed, the buyer makes payments directly to the developer while the land title remains with the developer until the amount is paid in full. These arrangements often involve high interest rates, and many are not recorded with the county clerk.⁶ If even one payment is missed, the developer may foreclose on a property and the buyer loses his or her entire investment.⁷



Responses to Specific Questions in the Notice of Proposed Rulemaking

1. What are the advantages and disadvantages, if any, to using colonia census tracts instead of colonias, for purposes of identifying and verifying Duty to Serve-eligible activities?

HAC agrees with the NPRM that colonia census tracts offer several advantages over colonias:

- Sub-county units of geography are often more precise and uniform indicators of rurality than counties.
- It is easy to determine the location of census tracts and map them.
- It would be difficult to map some colonias at the level of census blocks, the components of census tracts. While it might be relatively easy to link incorporated colonias to blocks, additional work would be needed to identify and link the unincorporated areas with census geographies.
- The other high needs areas for Duty to Serve purposes are based on census tracts.
- Home Mortgage Disclosure Act (HMDA) data is available by census tracts.

Finally, as HAC's data analysis found, a tract-based definition fits well with the goals of the Duty to Serve program. In the HAC-defined Colonias Investment Areas, the rate of conventional mortgage lending, measured as the number of loan originations per thousand owner-occupied homes, is half the rate of the larger U.S.-Mexico border region. HMDA data shows that loan activity is nearly three times lower in rural Colonias Investment Areas than in the border region as a whole.⁸ While Hispanic/Latino residents comprise a large share of the population in many colonias, particularly in Texas, HAC found that in Colonias Investment Areas they received a disproportionately low share of loans. These tracts also have higher poverty rates and lower housing density than other parts of the border area.⁹ In sum, they are underserved and would be logically included among the Duty to Serve target areas.

There does seem to be one difference between FHFA's proposed definition of "colonias census tracts" and HAC's proposed "Colonias Investment Areas": HAC's analysis included places in counties within 150 miles of the U.S.-Mexico border, whereas FHFA's proposal would include places anywhere in the border states of Arizona, California, New Mexico, and Texas, so long as they were designated as colonias by a federal, state, tribal, or local government. HAC has no objection to this slightly expanded definition, since it would not add many places and would not extend beyond the border states. FHFA's 2016 final rule noted that these places – such as Marion, Newton, Red River, and Sabine counties, determined by the Texas



Secretary of State to contain colonias – have needs similar to those closer to the border.¹⁰

2. Are there other ways to identify the geographic areas in which the Enterprises should receive Duty to Serve credit for eligible activities addressing colonias? If so, describe the alternative approach(es) and any advantages and disadvantages over the proposed census tract-based methodology.

HAC's research, on which FHFA's proposal is based, shows that other approaches have serious disadvantages compared to the use of census tracts. HAC's work was carefully considered, rigorous, and thoroughly reviewed by experts. As explained in the report, it involved six basic processes:

1. Identification: Create a universal list of officially recognized colonias from existing lists of colonias established by federal, state, tribal, or local governments.
2. Location: Geolocate the recognized colonias records on a map, using census blocks.
3. Aggregation: Aggregate the identified census blocks into tracts.
4. Compilation: Consolidate disparate data into one uniform Colonias Investment Area database.
5. Exploration: Conduct preliminary analyses to better understand basic social, economic, housing, and mortgage finance elements of the constructed Colonias Investment Areas and compare them to larger regional and national dynamics.
6. Feedback: Obtain expert and stakeholder feedback on the concept of Colonias Investment Areas.

Alternative approaches have distinct disadvantages. For example, allowing the Enterprises to identify colonias has not worked well over the last few years. Focusing on one part of the region – as Freddie Mac has done, concentrating on six counties in Texas – is not fair to colonias that do not fall within that specific area.

3. What are the advantages and disadvantages, if any, to revising the Duty to Serve "rural area" definition to incorporate all census tracts that contain a colonia regardless of their location?

HAC understands the rationale for including colonia census tracts that are within urban areas, but believes the Duty to Serve regulations should maintain an emphasis on those in rural areas. While urban colonia census tracts have serious unmet needs, the needs in rural colonia census tracts are even greater.

HAC's research found that in rural Texas "there were 35 loans per thousand owner-occupied units in rural Colonias Investment Areas, compared to 73 loans per thousand for rural areas not in Colonias Investment Areas. This difference exists for all four border region states."¹¹ Similarly, "for each border state, high-cost lending was



more common in rural Colonias Investment Areas than in rural non-Colonias Investment Areas.”¹²

To account for the greater needs in rural colonia census tracts, HAC suggests that, while Enterprise activity in any colonia census tracts should receive Duty to Serve credit, activity in rural tracts should be given greater weight than that in urban tracts. Alternatively, the weighting differential could be based on poverty rates rather than location, with the greatest credit going to activity in the highest poverty tracts.

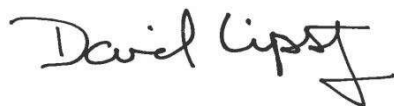
Periodic updates are needed

HAC agrees with FHFA’s proposal to update the list of colonia census tracts periodically. It may not be sufficient, however, to conduct an update only every ten years when census tract boundaries are updated. Federal, state, tribal, or local governments may not update their definitions of colonias on any regular basis, as HAC’s report notes. Therefore HAC stands by its recommendation for interim modifications if a significant development or change occurs (e.g., a new database is developed by a public entity, a major study is issued, or decennial Census results are released), or if updated information is needed for a specific activity such as a new investment initiative.¹³

Conclusion

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have questions or need additional information.

Sincerely,



David Lipsetz
President & CEO

¹ Housing Assistance Council, *Colonias Investment Areas: Working Toward a Better Understanding of Colonia Communities for Mortgage Access and Finance* (Washington, DC: Fannie Mae, 2020), <https://ruralhome.org/reports/understanding-the-colonias-investment-areas/>.

² Guillermina G. Núñez-Mchiri, “The Political Ecology of the *Colonias* on the U.S.-Mexico Border: Human-Environmental Challenges and Community Responses in Southern New Mexico,” *Journal of Rural Social Sciences* 24, no. 1 (2009): 67-91, 70, <https://egrove.olemiss.edu/jrss/vol24/iss1/5/>.



³ Federal Reserve Bank of Dallas, *Texas Colonias: A Thumbnail Sketch of the Conditions, Issues, Challenges and Opportunities* (Dallas: Federal Reserve Bank of Dallas, n.d.), <https://www.dallasfed.org/~media/documents/cd/pubs/colonias.pdf>.

⁴ Angela Donelson and Esperanza Holguin, "Homestead Subdivision/Colonias and Land Market Dynamics in Arizona and New Mexico," *Memoria of a Research Workshop: Irregular Settlement and Self-Help Housing in the United States* (Cambridge, MA: Lincoln Institute of Land Policy, 2001), 39-41, https://www.researchgate.net/publication/283151396_Memoria_of_a_Research_Workshop_Irregular_Settlement_and_Self-Help_Housing_in_the_United_States.

⁵ Jean W. Parcher and Delbert G. Humberson, "CHIPS: A New Way to Monitor Colonias Along the United States-Mexico Border," U.S. Geological Survey Open-File Report 2007-1230, <https://pubs.usgs.gov/of/2007/1230/pdf/OFR2007-1230.pdf>.

⁶ Federal Reserve Bank of Dallas, *Texas Colonias*.

⁷ Parcher and Humberson, "CHIPS."

⁸ HAC, *Colonias Investment Areas*, p. 4.

⁹ Federal Housing Finance Agency, "Enterprise Duty to Serve Underserved Markets Amendments," Notice of Proposed Rulemaking, *Federal Register* 87, no. 192 (October 5, 2022), 60331-60338, 60336, <https://www.federalregister.gov/d/2022-21404>.

¹⁰ Federal Housing Finance Agency, "Enterprise Duty to Serve Underserved Markets, Final Rule," *Federal Register* 81, no. 250 (December 29, 2016), 96242-96301, 96276, <https://www.federalregister.gov/d/2016-30284>.

¹¹ HAC, *Colonias Investment Areas*, p. 31.

¹² HAC, *Colonias Investment Areas*, p. 37.

¹³ HAC, *Colonias Investment Areas*, p. 41.

