



March 17, 2016

Mr. Alfred M. Pollard, Esq.  
General Counsel  
Federal Housing Finance Agency  
400 7th Street, SW  
Washington, DC 20024

Re: RIN 2590-AA27, Proposed Rule on Enterprise Duty to Serve Underserved Markets

Dear Mr. Pollard:

On behalf of the state Housing Finance Agencies (HFAs) we represent, the National Council of State Housing Agencies (NCSHA) thanks you for the opportunity to comment on the Federal Housing Finance Agency's (FHFA) proposed Enterprise Duty to Serve Underserved Markets Rule (the "Duty to Serve rule").

NCSHA represents the HFAs of the 50 states, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. HFAs share a public-purpose mission of providing affordable housing to the people of their jurisdictions who need it. They have established a multi-decade record of safe and sound lending that has made it possible for millions of people of modest means to purchase their first homes or access affordable rental housing. They have achieved much of this work with the federal Low Income Housing Tax Credit (Housing Credit) and tax-exempt private activity Housing Bond programs, which HFAs administer in nearly every state.

NCSHA commends FHFA for all of its efforts under the leadership of Director Watt to encourage the Government-Sponsored Enterprises (GSEs) to do more to support responsible affordable housing lending. We are especially pleased that FHFA has produced in this proposed rule such a strong and comprehensive strategy for increasing Fannie Mae's and Freddie Mac's responses to the housing needs of underserved markets and populations. We thank FHFA for including within this rule several provisions designed to support key HFA programs, most notably the Housing Credit and Housing Bonds. We offer the following thoughts in response to the rule's proposals and questions.

## **HFAs and the GSEs: Effective Partners in Affordable Housing**

NCSHA has long believed that the GSEs have a key role to play in creating affordable housing opportunity in this country. In fact, NCSHA was one of the first organizations to call upon Congress to require of the GSEs a stronger commitment to affordable housing, helping to convince it to establish the first GSE affordable housing goals more than two decades ago.

In recent years, NCSHA has implored Congress and the Administration to establish within whatever system emerges from housing finance reform an even more powerful dedication to affordable housing. In the meantime, we are so grateful for FHFA's efforts to push within the existing system for greater affordable housing results.

As FHFA knows, NCSHA, our HFAs, and Fannie Mae several years ago established the first of several preferred single-family lending partnerships, within which Fannie Mae has offered HFAs exclusively special mortgage loan pricing and terms in recognition of the strength and success of HFA lending. In 2011, Fannie Mae launched its HFA Preferred Products, which have been an enormous success, with 40 HFAs currently offering the products. Freddie Mac followed suit with NCSHA's encouragement, bringing on line last year its HFA Advantage mortgages, which provide terms similar to those offered by Fannie Mae. NCSHA and HFA leaders are currently in discussions with Fannie Mae to develop an HFA multifamily loan product.

FHFA has contributed significantly to this recent-year progress by recognizing the importance of HFA-GSE partnerships in affordable housing lending. FHFA's 2014 Strategic Plan for Conservatorship ("the Plan") credited HFAs with having "historically provided access to credit and lower down payment lending for low- and moderate-income families" and having "proven, strong performance records." The Plan called for both Fannie Mae and Freddie Mac to expand their partnerships with state HFAs. FHFA included similar language in its proposed Strategic Plan for the Conservatorship of Fannie Mae and Freddie Mac for years 2015-2018.

### **GSE Purchase of HFA Housing Bonds**

NCSHA strongly supports the provision of the proposed rule that would allow the GSEs to receive credit for purchasing and providing credit enhancement on HFA-issued Housing Bonds. GSE support for Housing Bonds will inject liquidity into the still recovering Housing Bond market, aiding HFA single-family and multifamily lending activity, without exposing the GSEs to excessive risk.

Prior to the housing and economic crisis, the GSEs purchased and credit enhanced large volumes of HFA Housing Bonds and still provide limited credit enhancement today. While the GSEs' Senior Preferred Stockholder Agreements with the U.S. Department of Treasury currently prohibit the GSEs from purchasing Housing Bonds, we hope that Treasury will lift this restriction in light of the Duty to Serve proposal and the GSEs' improved financial health.

Housing Bonds have historically served as HFAs' primary means of financing their affordable housing lending, and HFAs have utilized them to serve many of the borrowers and markets targeted for assistance under the proposed rule. Through single-family Housing Bonds, commonly known as Mortgage Revenue Bonds or MRBs, HFAs have helped over 3 million low- and moderate-income households purchase their first homes. In a typical year, as many as 75,000 families purchase homes with MRB mortgages. HFAs have used multifamily Housing Bonds to finance over 1 million affordable apartments, and use them to finance an additional 30,000 apartments each year.

We are concerned, however, that the proposed rule would only provide the GSEs Duty to Serve credit for purchases of Housing Bonds backed entirely by mortgages made to borrowers earning 80 percent of area median income (AMI) or less, who purchase either manufactured homes or homes located in rural areas. Given that most Housing Bond issues are backed by large numbers of mortgages to low- and moderate-income borrowers purchasing various types of homes in diverse geographic areas, it would be difficult if not impossible for the GSEs to earn credit for their Housing Bond investments, which could discourage them from making such investments altogether.

We are also troubled that the rule limits Duty to Serve credit to purchases of multifamily Housing Bonds that finance rental homes devoted to families earning 80 percent of AMI or less, as many Housing Bond-financed developments serve some residents with incomes above this limit to achieve income-mixing and other worthy goals.

We urge FHFA not to impose these limits on the GSEs' ability to earn credit for Housing Bond investments, so the full potential of GSE investment in Housing Bonds can be realized.

## **FHFA Questions**

### Implementation of Duty to Serve Rule

*1. How much discretion should the Enterprises have in selecting activities—Core Activities and Additional Activities—to serve the underserved markets?*

NCSHA suggests that the GSEs be given the flexibility to determine which of the various Core Activities and Additional Activities described under the proposed rule they will undertake and how. Both GSEs have considerable housing finance expertise and market knowledge, which they should be allowed to put to work to achieve maximum impact, foster innovation, and respond to market developments.

We believe it is important, however, for the GSEs to evaluate and seriously consider how they might support all of the activities identified in the proposed rule. To this end, we strongly

support FHFA's proposal to require the GSEs to explain in their Underserved Market Plans what they intend to do—and not do—in each activity area and share their rationale behind these decisions.

*7. Is there an alternative mechanism to an Underserved Markets Plan that would better enable FHFA to evaluate the Enterprises' Duty to Serve obligations?*

Requiring the GSEs to put together Underserved Markets Plans is a reasonable and responsible way to ensure the GSEs describe how they intend to fulfill their Duty to Serve obligations.

*9. Should public input be sought on the Enterprises' proposed Underserved Markets Plans and, if so, is there a more effective approach than the proposed approach?*

NCSHA supports requiring public input on the plans and FHFA's proposed approach. Giving policy experts and those with on-the-ground experience in affordable housing development and finance the opportunity to comment on the plans would likely result in stronger plans that are more responsive to the underserved markets' needs.

#### Low-Income Housing Tax Credit

*41. Should FHFA allow the Enterprises to resume LIHTC equity investments? Would the resumption of LIHTC equity investments by the Enterprises benefit the financial feasibility of certain LIHTC projects or would it substitute Enterprise equity funding for private investment capital without materially benefiting the projects?*

NCSHA recommends that FHFA allow the GSEs to resume making Housing Credit equity investments. Allowing GSE Housing Credit investments will only strengthen an already thriving market and support its resiliency should unexpected events cause market disruptions.

As the proposed rule notes, the GSEs were significant Housing Credit investors from the program's inception until 2008, when their lack of profits made it unnecessary for them to make investments to offset their tax liability. The GSEs' departure from the Housing Credit market, along with other factors attributable to the economic downturn, led to a temporary but steep decline in Housing Credit pricing and production.

The Housing Credit market since has recovered due in part to the program's durable design and ability to attract a variety of investors. Financial institutions are particularly motivated to invest in Housing Credit projects because they receive credit for those investments under the Community Reinvestment Act (CRA). This has created a competitive market with generally high prices for Credits, currently averaging nearly a dollar per dollar of Credit. However, Housing Credit pricing for developments in underserved areas where no CRA credit

is available is often lower than it is in CRA areas, which means less equity is available for those properties. GSE participation in these areas in particular could boost pricing, thus providing more equity to these properties.

*42. If FHFA allows the Enterprises to resume LIHTC investments, should FHFA limit investments to support for difficult to develop projects in segments of the market with less investor demand, such as projects in markets outside of the assessment areas of large banks or in rural markets or for preservation of projects with expiring subsidies? Are there other issues that FHFA should consider if limiting the types of LIHTC projects appropriate for equity investment by the Enterprises?*

NCSHA believes that the GSEs need to have sufficient flexibility to make those investments they feel will best support affordable housing while limiting their risk. Like all investors, they should have the ability to adapt to an ever-changing marketplace. Consequently, we do not believe FHFA should impose limits on the types of Housing Credit properties in which the GSEs are allowed to make equity investments.

While GSE participation in markets outside of CRA assessment areas would be especially helpful, strictly limiting GSEs' Housing Credit investments to segments of the market with less overall investor demand, could prevent them from developing a healthy and diversified Housing Credit portfolio. Moreover, such limitations could impact their ability to invest in Housing Credit funds, as those funds often include properties located in diverse areas.

*43. If FHFA permits the resumption of LIHTC equity investments, should Duty to Serve credit be provided only for LIHTC equity investments in projects with expiring subsidies or projects in need of refinancing, or should Duty to Serve credit also be given for LIHTC equity investments in new construction projects with regulatory agreements that assure long-term rental affordability?*

NCSHA believes it would be helpful for the rule to limit Duty to Serve credit to GSE Housing Credit investments that further the preservation of existing affordable rental housing. However, we urge FHFA to define preservation broadly and not to limit it to properties with expiring subsidies or those in need of refinancing.

*44. If FHFA allows the Enterprises to resume LIHTC investments, should FHFA limit such investments to those that promote residential economic diversity, for example, by investing in LIHTC properties located in high opportunity areas, as proposed to be defined in § 1282.1, to address concerns raised about the disproportionate siting of LIHTC housing (non-senior) in low-income areas and the effect on residential segregation?*

As mentioned in our answer to Question 42, NCSHA believes that any efforts to restrict GSE Housing Credit equity investments to particular markets and/or project types would limit the GSEs' ability to utilize such investments to support affordable housing broadly. In a similar vein, we recommend that FHFA not impose "residential economic diversity" standards on the GSEs' Housing Credit investments.

45. *Should FHFA consider permitting the Enterprises to act as the guarantor of equity investments in projects by third-party investors provided any such guarantee is safe and sound and consistent with the Enterprise's Charter Act? If so, what types of guarantees should the Enterprises offer?*

NCSHA supports allowing the GSEs to guarantee Housing Credit equity investments. Allowing the GSEs to resume this activity will help revitalize a thin credit enhancement market, potentially attracting more investors to the Housing Credit market. According to Fannie Mae, prior to the financial crisis, when the GSEs ceased guaranteeing Housing Credit investments, around 25 percent of such investments contained credit enhancement. In the current market, less than 10 percent of such investments are guaranteed. GSE guarantees would also strengthen the secondary market for Housing Credits.

#### Support for New Multifamily Construction

29. *Should Enterprise purchases of permanent construction takeout loans on new affordable multifamily rental properties with extended-use regulatory agreements that will keep rents affordable for a specified long-term period, such as 15 years or more, receive credit under the affordable housing preservation market? What would be an appropriate period of long-term affordability for the extended-use regulatory agreements?*

NCSHA does not believe the GSEs should receive credit under the affordable housing preservation market for supporting new construction, as they currently purchase such loans and if given credit for them, may not engage in other valuable preservation activities. If FHFA decides to award credit for new properties, we support limiting such credit to properties with extended-use restrictions and long-term affordability agreements.

#### Support for Federal Multifamily Housing Programs

31. *In what ways, including potential responsible changes to their underwriting and reserve requirements, could the Enterprises prudently extend their support for Section 8-assisted properties?*

33. *Are there additional ways in which the Enterprises could support properties currently funded under HUD Section 221(d)(4) FHA Insurance Program?*

34. *Are there other ways in which the Enterprises could support properties currently funded under the HUD Section 202 Housing Program for Elderly Households?*

35. *Are there ways in which the Enterprises could support the HUD Section 811 Housing Program for Disabled Households?*

36. *Are there ways in which the Enterprises could support McKinney-Vento Homeless Assistance Act programs?*

37. *Are there other ways in which the Enterprises could extend their support for the USDA Section 515 Rural Housing Program?*

NCSHA supports greater GSE involvement with all of these critical programs, which many HFAs administer. We are excited to work with FHFA and the GSEs to develop innovative and effective ways that HFAs and the GSEs can partner to extend the reach of these programs.

### Manufactured Housing

11. *Should Enterprise support for manufactured home loans titled as real property be a Regulatory Activity?*

NCSHA strongly supports giving the GSEs Duty to Serve credit for supporting manufactured housing loans as real property. Many HFAs offer manufactured housing loans to provide lower income families a safe and affordable option for becoming homeowners. A 2013 report by the Center for Enterprise Development (CFED) found that manufactured housing loans, when responsibly underwritten, perform strongly. The report also credited HFA manufactured housing loans for outperforming similar non-HFA manufactured housing loans.

Despite the success of responsible manufactured housing lending, GSE support for the market has been limited. Establishing such support as a “Regulatory Activity” under the proposed rule will strengthen the secondary market for such loans, allowing HFAs to assist more manufactured housing buyers.

12. *Should the Duty to Serve rule only give credit for support to manufactured home borrowers with specific needs, such as current borrowers with real estate mortgages with excessive coupon rates (and what should be considered “excessive”), or current borrowers with chattel loans who could benefit from conversion to real estate financing? If so, what kinds of needs would be appropriate?*

NCSHA believes that manufactured housing is critical to expanding homeownership for low- and moderate-income families and that the GSEs should receive Duty to Serve credit for supporting all such lending when done responsibly. We urge FHFA not to impose additional restrictions.

13. *Should the Enterprises receive credit for purchasing chattel loans, on an ongoing or pilot basis? If so what improvements should be made in the process for originating and servicing that would make chattel loans safer for purchase by the Enterprises and safer for borrowers?*

NCSHA believes that manufactured housing loans that are titled as real estate offer far better terms, protections, and wealth-building opportunity for consumers than chattel loans. Also, as FHFA notes in the proposed rule, manufactured housing loans titled as chattel significantly underperform those titled as real estate.

However, NCSHA recognizes that there are situations when, due to state and/or local laws or personal circumstances, a chattel manufactured housing loan is the only option available to the consumer. Consequently, NCSHA recommends that the GSEs be allowed to receive credit for purchasing chattel loans, if those loans are responsibly made.

*23. Are there other loan programs, terms or lending criteria that, if adopted, could increase Enterprise purchases of blanket loans on manufactured housing communities?*

NCSHA thanks FHFA for including a provision in the proposed rule enabling the GSEs to receive credit for purchasing blanket loans for manufactured housing communities. Several HFAs currently finance such communities as a way of preserving them and protecting their residents.

Unfortunately, many of these communities suffer from aging infrastructure that threatens their long-term sustainability. To help such communities secure the financing necessary to make needed repairs and upgrades, we ask that FHFA amend the proposed rule to also allow the GSEs to receive Duty to Serve credit for purchasing repair rehabilitation loans for such communities.

#### Affordable Housing Preservation

*40. Are there other state or local affordable housing programs for multifamily or single-family housing that the Enterprises could support that should be eligible to receive Duty to Serve credit in addition to those discussed above?*

The GSEs should be encouraged to work with HFAs to identify state affordable housing programs that would benefit from their support. In addition to the federal programs HFAs rely upon, many also operate or utilize state programs, such as state housing trust funds and credits.

#### Rural Homeownership

*70. Would one of the four definitions discussed above better serve Duty to Serve objectives, and if so, why?*

NCSHA urges FHFA to adopt the U.S. Department of Agriculture's (USDA) definition of "rural" in its final rule, or to at least allow the GSEs to receive credit for activity in USDA-defined rural areas. NCSHA appreciates FHFA's effort to develop a comprehensive and complete definition of "rural." However, most if not all federal rural housing programs and most market participants use the USDA definition. Adopting a different definition for the Duty to Serve rule will likely lead to confusion among market participants and complicate the GSEs' efforts to assist rural homebuyers.

Residential Economic Diversity

82. *Is FHFA's proposed definition of "high opportunity area" the most appropriate? Should the rule use DDAs to define high opportunity areas outside of metropolitan areas, or is there a better definition, such as a factor-based definition, that would be preferable for these areas?*

NCSHA does not believe that Difficult Development Areas (DDA) as designated by the U.S. Department of Housing and Urban Development are necessarily high opportunity areas, and would therefore recommend that FHFA not use DDAs as its definition for high opportunity areas. Section 42 of the Internal Revenue Code [§42(d)(5)(B)(iii)(I)] defines a DDA as "any area designated by the Secretary of Housing and Urban Development as an area which has high construction costs, land, or utility costs relative to area median gross income." These areas do not necessarily provide access to the types of amenities—quality schools, transportation, job opportunities, etc.—that are hallmarks of high opportunity areas.

83. *How could FHFA incorporate state-defined high opportunity areas (or similar terms) into its definition of high opportunity area? If such state-defined areas are included, how could this be implemented by the Enterprises?*

Should FHFA give the GSEs extra credit for providing affordable housing in high opportunity areas, we recommend that FHFA incorporate state-defined high opportunity areas into its definition of high opportunity areas when such definitions exist. As noted in the rule, many states include such definitions as part of their Housing Credit Qualified Allocation Plans in order to provide incentives to locate housing in these areas. While we understand that these definitions are not uniform, we believe that using the definitions developed by the states is far preferable than using DDAs as a proxy for high opportunity areas.

Thank you for your consideration of our comments. Please do not hesitate to contact me if we can provide additional information.

Sincerely,



Barbara Thompson  
Executive Director