NCRC

OPENING DOORS TO ECONOMIC OPPORTUNITY

March 16, 2016

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
400 Seventh Street, SW, 8th Floor
Washington, D.C. 20024

**RIN 2590-AA27**

Dear Mr. Pollard:

The National Community Reinvestment Coalition[1] (NCRC) is pleased to submit these comments on the proposed rule to implement the Duty to Serve requirements imposed on the Government Sponsored Enterprises Fannie Mae and Freddie Mac (the Enterprises) by the Housing and Economic Recovery Act of 2008 (HERA).[2] The Duty to Serve underserved markets was created by Section 1129 of HERA and requires the Enterprises to "…provide leadership to the market in developing loan products and flexible underwriting guidelines to faciltate a secondary market for mortgages for very low-, low-, and moderate-income families for manufactured housing, affordable housing preservation market, and rural markets."[3]

This comment focuses on the role that the proposed Duty to Serve will play in ensuring that the Enterprises serve underserved populations. While the Duty to Serve requirement addresses important needs, it cannot be regarded as the same broad mandate as the Affordable Housing Goals nor as a substitute for the Affordable Housing Goals. In addition, this comment illustrates the crippling nature of conservatorship in the Enterprises' abilities to meet both the Duty to Serve and the Affordable Housing Goals. Finally, this comment addresses several details of the proposed rule.

***The Duty to Serve Rule is not the Affordable Housing Goals***

NCRC wants to make clear that while our comment seeks to improve the rigor of the proposed Duty to Serve rule, the Duty to Serve framework cannot serve as a substitute for the Affordable Housing Goals. The Duty to Serve can complement the Affordable Housing Goals in reaching the three underserved market segments, but it cannot provide the same

---

[1] NCRC was formed in 1990 by national, regional, and local organizations to develop and harness the collective energies of community reinvestment organizations from across the country so as to increase the flow of private capital into traditionally underserved communities. NCRC has grown to an association of more than 600 community-based organizations that promote access to basic banking services, including credit and savings, to create and sustain affordable housing, job development and vibrant communities for America's working families.

[2] *See* HERA § 1129.

[3] Enterprise Duty to Serve Undcrservcd Markets: Proposed Ruic. 80 Fed. Reg. 79182 (Dec. 18. 2015)

impetus for the Enterprises to serve the broader low- and moderate-income and minority communities that are the focus of the Affordable Housing Goals.

The Affordable Housing Goals have much stronger and measurable numeric targets. It is a requirement that a certain percentage of the Enterprises' financing is devoted to purchasing mortages offered to various segments of low- and moderate-income borrowers and underserved communities. When Congress enacted the Federal Housing Enterprises Financial Safety and Soundness Act in 1992, the statute contemplated that the Enterprises would "lead the industry" in making mortgage credit available to the targeted borrowers, and the Act's legislative history evinced Congress' intent that the Enterprises would have to "stretch" to meet the goals.[4] Therefore, the Affordable Housing Goals establish clear performance measures and comparisons to the primary market.

In contrast, the Duty to Serve rule does not have well-developed performance measures. Firstly, it is not possible to compare the Enteprises to the primary market in activities like affordable housing preservation for which data on primary market activities is not readily available. In addition, the Duty to Serve offers added flexbility in letting the Enterprises choose on which activities to focus. While flexibility might be appropriate in the case of niche markets that are hard to serve with standard products, a more rigorous examination and requirement is necessary and possible to ensure that the Enterprises are serving broad segments of low- and moderate-income borrowers with standardized and safe and sound products.

***Impact of the Conservatorship and the Enterprises' Wind Down on Implementation of an Effective Duty to Serve Rule***

We want to state the obvious: the Enterprises will be severely constrained in their ability to "provide leadership" in the three underserved markets while they are being wound down and abiding by the constraints of the conservatorship and related policies that directly undermine their profitability. Quite simply, zero capital reserves in concert with other policy being imposed on the Enterprises is antithetical to an effective Duty to Serve rule and fulfilling the Enterprises' "affirmative obligations to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return."

The Enterprises, for example, have had difficulty meeting their revised Affordable Housing Goals while in conservatorship, even where feasible. As a result, Freddie Mac was instructed in December 2015 to developed a housing corrective action plan on how it will meet its Affordable Housing Goals going forward.[5]

[4] 12 U.S.C. 4562(e)(2)(B)(iv); S. Rep. No 102-282

[5] Final Determinations of Freddie Mac's 2014 Housing Goals Performance, FHFA Letter, December 17, 2015.

Since 2010, Freddie Mac has failed to meet one or more of its housing goals every year, except 2012, when the Enterprise lagged market performance on several single-family housing goals. It is also noteworthy that although the Federal Housing Finance Agency (FHFA) has determined that Fannie Mae met its housing goals for 2014, it also missed one or more goals in 2010, 2011 and 2013. In 2012, Fannie Mae also lagged market performance on several of its single-family housing goals. Importantly, in the case of both of the Enterprises, FHFA has repeatedly deemed the achievement of the Enterprises[1] single-family housing goals as feasible.

The Enterprises have also lagged in mortgage purchases affecting African-American borrowers and Hispanic borrowers.[6]

*A. The Profitability of the Enterprises*

FHFA seized control of the Enterprises during the height of the housing crisis because losses on their mortgage holdings had depleted their capital reserves. As noted in the notice of proposed rulemaking, since entering conservatorship both Enterprises have returned to profitability. The U.S. Department of the Treasury invested a total of $187.5 billion in the Enterprises, and through December 31, 2015, the Enterprises have made a total of $241.2 billion in dividends payments to the U.S. Treasury on the senior preferred stock.[7]

At the time they were placed in conservatorship, the Enterprises also executed Senior Preferred Stock Purchase Agreements (PSPAs) with the U.S. Treasury under which the U.S. Treasury agreed to provide financial support to them during conservatorship. The PSPAs also required the Enterprises to wind down their largest source of earnings – their respective investment portfolios – to $250 billion by 2018, and the agreements also prevent the Enterprises from accumulating a financial cushion against future losses – winding down their capital buffer to zero by January 1, 2018. Therefore, by 2018, the Enterprises will pay their entire quarterly net worth to the U.S. Treasury as a dividend.[8]

The FHFA Office of Inspector General cited a number of market factors and conditions that make the future profitability and financial performance of the Enterprises' business segments uncertain, including:

- The winding down of their investment portfolios and loss of interest income;
- The level of credit risk guarantee fees they will be able to charge;

[6] For example, Freddie Mac's 2014 Single Family Owner-Occupied mortgage purchases for African-American borrowers was 3.7% and for Hispanic borrowers was 8.5%. *Annual Housing Activities Report for 2014, Federal Home Loan Mortgage Corporation (March 11, 2015).* Fannie Mae's 2014 Single Family Owner-Occupied mortgage purchases was 3.56% for African-American borrowers and 7.72% for Hispanic borrowers. *Fannie Mae 2014 Annual Housing Activities Report and Annual Mortgage Report (March 13, 2015).*
[7] *Analytical Perspectives*, Budget of the United States Government, Fiscal Year 2017
[8] *The Continued Profitability of Fannie Mae and Freddie Mac Is Not Assured,* FHFA OIG (March 18, 2015)

- The elimination of a capital cushion to buffer losses;
- The changes in rates that can cause fair value losses or fair value gains on the Enterprises' derivatives portfolios; and
- The elimination of earnings from non-recurring events.[9]

In addition, FHFA Director Melvin Watt identified the Enterprises' increasing volume of their credit risk transfer transactions, which are intended to transfer credit risk off the books of Fannie Mae and Freddie Mac but also transfer current revenues away from the Enterprises to the private sector.[10]

Quite simply, the Enterprises' future profitability is predictably and deliberately uncertain because of contractual obligations and policy choices associated with a protracted conservatorship and the Enterprises being wound down. Therefore, we are unclear on how they will be able to "provide leadership" in serving these three underserved markets or fulfilling their broader affirmative obligations under the law.

*B. The Real Ramifications on the Availability and Cost of Credit for Borrowers*

Since entering conservatorship, the Enterprises have attempted to replace their loss in net interest income from the aggressive wind down of their investment portfolios with dramatic increases in the credit risk guarantee fees they charge. Guarantee fees increased 250 percent between 2009 and 2014, which has increased the cost of mortgage credit for low- and moderate-income borrowers.

The Enterprises have also ceased doing a number of things that facilitate safe and sustainable mortgage financing in underserved communities, including the two mentioned in the notice of proposed rulemaking: investment activities in the Low Income Housing Tax Credit Program and grantmaking.

In addition, the Enterprises have ceased or scaled back investments in Community Development Financial Institutions (CDFIs) and affordable multifamily properties. While the Capital Magnet Fund, which is financed by an assessment on new business at the Enterprises, provides competitive grants, the Enterprises' prior investments were broader and helped build, sustain and attract other investors to CDFIs.

There are a host of safe, sound and affordable loan products that the Enterprises used to offer that provided opportunities for safe and sustainable home ownership for underserved borrowers and communities, loan products that performed well throughout the housing crisis. Although FHFA has indicated that it expects the Enterprises to meet the loan product assessment factor through activities that do not rise to the level of new products "…consistent with safety and soundness and the requirements of conservatorship," we

[9] Ibid.
[10] Remarks of FHFA Director Melvin L. Watt at the Bipartisan Policy Center (February 18, 2016).

believe this reticence is completely unwarranted. There is ample evidence that the mortgage loan product itself can be a key determinant in the success of creditworthy borrowers who might otherwise be considered "risky" by lenders in the primary market. When placed in sustainable and affordable mortgages, such borrowers have been high-perfoming customers.[11] Notably, the HERA statute explicitly states that "… each enterprise shall provide leadership to the market in developing loan products…."[12]

The Enterprises used to do a great deal of capacity-building and grant making that laid the ground for subsequent loans and loan purchases affecting low- and moderate-income and minority borrowers and communities. The Enterprises have begun only recently to conduct limited outreach around their HomeReady and Home Possible products, which to-date have had very little take-up in the marketplace.[13] The Enterprises have a history of outreach and partnership with effective intermediaries in local communities, and they should resume that work in order to execute an effective *Duty to Serve* rule. Notably, the HERA statute contemplates evaluating the Enterprises based on: "…the amount of investments and grants in projects which assist in meeting the needs of such underserved markets."[14]

The Duty to Serve rule and the Affordable Housing Goals are required by law. Through these comments on the conservatorship and the related wind down activities, we wanted to lay bare the confliciting mandates imposed on the Enterprises by FHFA, the U.S Treasury and the PSPAs and related policies that undermine both the profitability of the Enterprises and, necessarily, their affirmative obligations to facilitate the financing of affordable housing through this Duty to Serve rulemaking, as well as their Affordable Housing Goals.

**Responses to FHFA Questions**

Regarding Duty to Serve, NCRC's specific comments are the following:

*Scoring System* (Question 80)

**80. Is there an alternative approach to evaluation of Enterprise Duty to Serve compliance that would enable FHFA to better measure the Enterprises' Duty to Serve compliance?**

NCRC maintains that the scoring system for evaluating an Underserved Markets Plan submitted by one of the Enterprises must be more rigorous. An Underserved Markets Plan

---

[11] *Making the Mortgage Market Work for America's Families*, CAP and NCLR, at 9-10 (June 5, 2013); *Setting the Record Straight on Homeownership*, UNC Center for Commuity Capital (2012); *Massachusetts SoftSecond Loan Program*, UNC Center for Community Capital, (2011); *Blame the Borrower? Not So Fast*, New York Times (November 25, 2007).

[12] 12 U.S.C. 4565(a)(1)

[13] *Why Fannie's 3% Down Payment Mortgages Have Been Slow to Take Off*, National Mortgage News (August 6, 2015).

[14] 12 U.S.C. 4565(d)(2)(D)

must address the activities the Enterprises will undertake to address needs in the following underserved markets:

- Manufactured housing
- Affordable housing preservation
- Rural markets

For each market, some of the activities are required by statute, some will be required by the FHFA Duty to Serve regulation, and some of them will be proposed by the Enterprises and approved by the FHFA. For example, under affordable housing preservation, Section 202 housing for the elderly is a statutory requirement while affordable homeownership preservation is a regulatory activity mandated by FHFA.

FHFA will develop a scoring system that will assign points from zero to 10 for each activity, such as Section 202 and affordable homeownership preservation. The maximum number of points for each underserved market will be 100. FHFA will assign one of four ratings (Exceeds, High Satisfactory, Low Satisfactory, and Fails) for each underserved market. Each rating will have a range of scores (90 to 100 for Exceeds, for example).

To make matters more complicated, there are four assessment area factors: outreach, loan purchase, loan product, and investments and grants. As the proposed rule now stands, each assessment factor does not need to be applied to each activity to determine the score of the activity. For instance, for the activity affordable homeownership preservation, an Enterprise can ask FHFA to determine a score using the assessment factors of outreach and investments but not loan purchase.

Each assessment factor is not equally important so NCRC asks FHFA to develop a consistent approach for applying the assessment factors to activities it deems most important. Of the four assessment factors, NCRC believes that loan purchase is the most important since it directly measures the number of loans under an activity that the Enterprise is purchasing. After FHFA reviews an Enterprise plan, it must assign the assessment factor of loan purchase to the activities it deems most important. Likewise, FHFA must ensure that an Enterprise is evaluated under at least three of the assessment factors for the activities that have the highest possible scores and when summed equal 50 points or more of the score for the particular underserved market.

FHFA must also further develop the loan product factor. The proposed rule has a sentence stating that the Enterprises should evaluate their underwriting guidelines "to increase the availability of loans to families targeted by the Duty to Serve, consistent with prudent lending practices." Access and safety and soundness are intertwined in that access to abusive loans will not lead to sustainable and affordable housing but instead to eviction and displacement. Thus, the loan product assessment factor must carefully assess whether Enterprise financing is extended to only responsible loans that have low default and delinquency rates. If an Enterprise is financing abusive and unaffordable loans to any market segment, it must be severely penalized by the FHFA evaluation. On Community Reinvestment Act (CRA) exams, a fair lending review identifies any violations of fair lending and consumer protection laws. The CRA rating is then downgraded if the violation is widespread and systemic. There could be an analogous procedure for the evaluation of underserved markets plans that involves downgrades for violations of law and also for unsafe and unsound practices.

*Incomes Served*

The statutory income range in the Safety and Soundness Act is different from that in CRA. CRA focuses on a lower income group than the Safety and Soundness Act. In order to promote consistency between the two pieces of legislation and best provide an outlet for bank lending that complies with CRA, the FHFA should generally provide more weight and award more points to Enterprise activities that target borrowers who have incomes within the CRA limits.

The Safety and Soundness Act defines very low income as up to 50 percent of area median income, low income as up to 80 percent of area median income, and moderate income as up to 100 percent of area median income. In contrast, CRA defines low income as up to 50 percent of area median income and moderate income as between 50 and 80 percent of area median income. The most significant inconsistency between the two laws is that the Safety and Soundness Act targets families and households with incomes between 80 to 100 percent of area median income while CRA does not. Clearly these modest-income households need assistance but are usually not confronted with inadequate or unaffordable housing to the same extent as those with lower incomes. When FHFA develops its scoring method, it should assign more points to an Enterprise activity if the activity directs most of its financing for households with up to 80 percent of area income. It would be undesirable if the underserved markets plan results in most of the activity being directed to those with incomes between 80 to 100 percent of area median income.

*Numerical Benchmarks* (Question 4)

**4. Are the requirements for Objectives discussed above appropriate, and should there be any additional requirements?**

NCRC recommends that FHFA increase the rigor with which numerical benchmarks are used in Enterprise Underserved Markets Plans. The proposed rule states that objectives the Enterprises describe for various activities "may include" numerical benchmarks. NCRC believes that the numerical benchmarks must be included in descriptions of various activities. If an Enterprise is discussing its planned financing of manufactured housing, for example, how can the general public or FHFA evaluate its plans if the Enterprise states that it will "finance manufactured housing for low-income families?" This assertion is meaningless in that it prevents a comparison to needs, Enterprise past levels of financing, or the activity of

NCRC
OPENING DOORS TO ECONOMIC OPPORTUNITY

the primary market. Such an assertion must result in zero points being allocated to a particular activity proposed by the Enterprise.

Whenever possible, FHFA must also require comparisons to the primary market. In the case of manufactured housing and rural markets, the Home Mortgage Disclosure Act (HMDA) data can be used to compare the percentage of Enterprise financing for very low-income, low-income, and moderate-income borrowers to the percentage of primary market loans for these borrower groups. This exercise does not involve the setting of quotas but rather compares the Enterprise to the primary market. If either Enterprise lags the primary market by a considerable extent, then it should score poorly on the particular activity.

Some activities, like affordable housing preservation, will lack data with which to compare the Enterprises to the primary market. In these cases, FHFA and the Enterprises should conduct their own research or use the research of other federal agencies and other reputable sources to judge Enterprise responsiveness to needs. For instance, if the U.S. Department of Housing and Urban Development (HUD) has identified the East Coast region as an area with a concentration of expiring Section 202 contracts for senior housing and an Enterprise is not serving the East Coast region well, the score on this activity would be low. In addition, the proposed objective "tied to market opportunities" must be amended to be "tied to market opportunities and needs." Adding the word "needs" would stimulate needs analysis such as the Section 202 analysis described here.

A careful and rigorous application of numerical benchmarks is needed to ensure that the Enterprises are submitting meaningful plans and that Enterprise progress on these plans are scrutinized in a thorough manner, resulting in ratings that hold the Enterprises accountable for serving the three underserved markets. Without numerical benchmarks, the plans run the danger of receiving rubber-stamp approval for vague promises of performance that are not actually attained.

*Ratings* (Question 81)

**81. Should FHFA consider a different rating structure (e.g., a rating structure with fewer or more ratings tiers)?**

NCRC appreciates that FHFA listened to concerns about its proposed two ratings during the 2010 rulemaking. Two ratings would obscure significant differences in performance. Accordingly, FHFA has proposed four ratings to assess performance in each underserved market: Exceeds, High Satisfactory, Low Satisfactory, and Fails. Each rating will have a range of scores (90 to 100 could possibly be the score for Exceeds, for instance).

NCRC recommends that FHFA add a fifth rating called Satisfactory (see table below). This would allow more nuance and meaningful distinctions in scoring. The table below shows possible scoring systems with four and five ratings. It also shows the results of dividing scores into even quartiles with four ratings and dividing scores into even quintiles with five ratings. The scoring systems not using even quartiles and quintiles have the most nuances. For example, Exceeds has a scoring range of 90 to 100 and the ten point range reserves Exceeds for truly exceptional performance.

In addition, the five-rating system has more nuance than the four-rating system. This can be seen when dividing scores evenly in quartiles or quintiles. In this case, the High Satisfactory rating has a range of 50 to 74 points when four ratings are used but 60 to 79 when five ratings are used. A score of 50 does not merit High Satisfactory since an Enterprise has only attained half of the possible points. In contrast, the lowest score of 60 for High Satisfactory corresponding to five ratings is more aligned with actual High Satisfactory performance in that the Enterprise has attained more than half of the possible points.

Regardless of how many ratings FHFA ultimately implements, FHFA must make publicly available the range of scores corresponding to each rating and the particular score that the Enterprise attained on each underserved market. This provides the public with the precise and nuanced information on FHFA's judgment of Enterprise performance.

Low Satisfactory as well as Fails would constitute failing ratings in NCRC's proposed five ratings system. If an Enterprise fails or there is a strong possibility of failure based on information in a semi-annual or quarterly report, the FHFA must not only require a remedial housing plan but also require a 60-day public comment period on the draft housing plan. The Enterprises must be held accountable for poor performance in these cases and the public must have real-time opportunities for suggesting improvements in performance.

| | Four Ratings - Possible Scores | | | |
|---|---|---|---|---|
| | Quartiles | | Not Quartiles | |
| Exceeds | 75-100 | | 90-100 | |
| High Satisfactory | 50-74 | | 80-89 | |
| Low Satisfactory | 25-49 | | 50-80 | |
| Fails | 1-24 | | 1-49 | |
| | | | | |
| | Five Ratings | | | |
| | Quintiles | | Not Quintiles | |
| Exceeds | 80-100 | | 90-100 | |
| High Satisfactory | 60-79 | | 80-89 | |
| Satisfactory | 40-59 | | 70-79 | |
| Low Satisfactory | 20-39 | | 50-69 | |
| Fails | 1-19 | | 1-49 | |

*Public Comment Periods on Enterprise Plans* (Question 9)

**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?**

Sufficient public comment periods are vital for maximizing opportunities for meaningful public input. The Enterprise plans are complex documents with multiple parts including three underserved market areas and activities and assessment factors for each market area. Also, within each underserved market, a consideration must be made regarding primary market performance and/or credit needs. It will take an Enterprise several months to develop these complex plans but the general public would only have 45 calendar days to comment on an Enterprise plan. NCRC believes that this must be increased to 60 or 90 days, which is more consistent with regulatory comment periods in general.

FHFA also proposes that if a final plan is modified by an Enterprise, FHFA has discretion to hold a public comment period. NCRC believes that holding an additional public comment period ranging from 60 to 90 days must be mandatory since modifications are likely to be significant.

*Term of Plan* (Question 8)

**8. Should the Enterprises be required to prepare Underserved Markets Plans for terms with a period other than three years?**

Three years is a reasonable time frame. First, this time period roughly corresponds with CRA exam cycles for banks and thus helps align bank and Enterprise strategic planning cycles. Second, a time period that is too long would lessen accountability by decreasing the frequency of FHFA review and public input. A time period that is too long would also make planning difficult since it is more difficult to forecast economic conditions and housing needs over a longer time frame. Third, a time period that is too short would not provide sufficient time for projects involving complex financing to be planned and executed.

***Activities and Issues Pertaining to Underserved Markets***

The following are NCRC's comments on activities and issues pertaining to each underserved market:

***Manufactured Housing Market***

*Chattel Loans* (Question 11)

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

NCRC agrees with FHFA that financing loans when property is titled as chattel must not count under the manufactured housing market goal. FHFA provides considerable detail of abuses and high default rates with chattel lending. Likewise, FHFA must not provide credit for loans that exceed Home Ownership and Equity Protection Act (HOEPA) thresholds for any of the underserved markets including the manufactured housing market.

*Consumer Protections* (Question 18)

**18. Are the proposed pad lease protections appropriate? Should any additional pad lease protections be required for an Enterprise to receive Duty to Serve credit?**

NCRC agrees with the proposed rule that Enterprise support for manufactured housing communities with pad leases would only count under the Duty to Serve if consumer protections apply as enumerated in the proposed rule including but not limited to 30-day notice of a rent increase and the right to cure defaults.

*Affordability and Estimation of Tenant Incomes* (Question 20)

20**. Would the proposed methodology for determining affordability effectively approximate the incomes of the community's tenants? Are there other approaches that could effectively approximate the incomes of manufactured housing community tenants to comply with the Duty to Serve family income requirements, e.g., the size of the blanket loan on the community or the size of the community?**

FHFA's proposed estimation methodology for determining tenant incomes in cases in which the median income of the census tract is above the area median income must be revised. The current formula provides favorable consideration for most of a loan amount in these cases. A more precise estimation formula would be using the most current year for the Home Mortgage Disclosure Act (HMDA) data. Using the HMDA data for the census tract in question, FHFA can determine what percent of home purchase borrowers overall, or those purchasing manufactured housing, were below 100 percent of area median income. This then becomes the percent to multiply by the unpaid principal balance of the loan.

## *Affordable Housing Preservation*

*Energy Efficiency* (Questions 51, 59):

**51. Should Enterprise support for multifamily properties that include energy improvements resulting in a reduction in the tenant's energy and water consumption and utility costs be a Regulatory Activity?**

**59. Should Enterprise support for single-family properties that include energy improvements resulting in a reduction in the homeowner's or tenant's energy and water consumption and utility costs be a Regulatory Activity?**

NCRC supports the proposal to make energy and water efficiency efforts for rental or homeownership units a regulatory activity under affordable housing preservation, provided these gains are not offset by rent increases or other new charges. Utility costs can be significant for lower income households, meaning that verifiable energy and water efficiency savings can preserve housing and make it more sustainable and affordable. In addition, FHFA should assess whether there is any verifiable way for the Enterprises to support transit-oriented development. In many cities, a considerable portion of the housing stock will be near bus stops or rail stations. However, FHFA could offer points in cases when a local jurisdiction has undertaken a planned development near a transit center that also involves a significant component of affordable housing.

*Low Income Housing Tax Credits (LIHTC)* (Questions 41, 42, 43):

**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?**

**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?**

**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?**

FHFA must allow the Enterprises to resume LIHTC equity investments. Affordable rental housing is in short supply. The Joint Center for Housing Studies estimates that just under half of the nation's renters were cost burdened in 2013.[15] Since affordability is such a pressing issue, FHFA should allow broad Enterprise participation in LIHTC projects and should not restrict Enterprise participation in LIHTC projects to only those with expiring subsidies or those outside of large bank assessment areas. FHFA could conduct a needs analysis and determine the metropolitan areas and counties experiencing the greatest incidence of housing

[15] *Projecting Trends in Severely Cost-Burdened Renters: 2015-2025*, ECP & JCHS (2015).

cost burdens for lower income renters. FHFA could then assign the greatest number of points to Enterprise LIHTC investments in these areas.[16]

FHFA should also consider the robustness of the market for LIHTC projects. If there are relatively few entities financing LIHTC projects overall or particular types of LIHTC projects, then an Enterprise-proposed LIHTC project would likely garner a high number of points. On the other hand, if there is an ample supply of LIHTC investors, then the Enterprises would receive few points for the particular LIHTC projects proposed. This recommendation of sizing the market would apply to all Enterprise-proposed projects, but NCRC mentions this in the LIHTC context because of concerns raised by some that there might be a good number of investors already available for LIHTC projects overall or for certain types of LIHTC projects.

## ***Rural Markets***

*High-Needs Rural Regions and Rural Populations* (Question 72):

**72. Should Enterprise support for housing for high-needs rural regions and high-needs rural populations be a Regulatory Activity?**

NCRC supports high-needs rural regions and populations being regulatory activities. Middle Appalachia, the Lower Mississippi Delta, and Colonias are economically disenfranchised regions with high incidence of poverty and housing problems. In addition, Indian reservations and migrant workers have also experienced a disproportionate amount of inadequate housing.

*Rural Definition* (Question 70):

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

NCRC recommends that FHFA adopt the recommendation by the Housing Assistance Council (HAC) for a rural area. This two-part definition is:

> Maintaining component number one (1) of FHFA's proposed definition - A census tract outside of an OMB designated MSA.

---

[16] See http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/ctools/css/americas_rental_housing_2015_web.pdf

Modifying component number two (2) of FHFA's proposed definition to a census tract in an MSA, but outside of Urbanized or Suburban tracts as designated by USDA RUCA Codes 1 and 2.

Under HAC's proposal, more than 2,100 census tracts under FHFA's original proposal are eliminated. These tracts are suburban in nature with population densities and access to credit typically found in suburban communities. HAC's proposal would also add back to the FHFA rural definition census tracts that are small towns or rural communities.

*Extra Credit for Residential Economic Diversity Activities*

NCRC supports the proposal that would motivate Enterprise financing for projects that promote economic diversity. Integration must be a national goal, which received an important boost during the summer of 2015 when the Supreme Court upheld federal fair housing efforts and enforcement. FHFA's proposal would be consistent and supportive of HUD's new Affirmatively Fair Housing requirement. In addition, federal bank agencies provide an Interagency Question and Answer document on CRA which encourages banks to participate in community plans that promote mixed-income housing and integration in gentrifying neighborhoods.[17]

*Definition of High Opportunity Area* (Question 82):

**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?**

NCRC supports the proposed definition as empirically based and accessible via a federal agency website. The overall concept of an empirically based definition that can generate specific census tracts that are high opportunity areas is reasonable and can facilitate planning by various stakeholders.

*Concentrated Poverty and Mixed-Income Housing* (Questions 84 and 85):

**84. Should FHFA consider other or additional definitions of "area of concentrated poverty?" For example, should FHFA consider adopting a definition similar to HUD's proposed designation of census tracts by racial and ethnic concentrations of poverty (RCAPs and ECAPs), which are census tracts with a non-white population of 50 percent or more and a poverty rate that exceeds 40 percent or is three times the average tract poverty rate for the metro/micro area (whichever is lower)?**

---

[17] See http://www.ffiec.gov/cra/pdf/2010-4903.pdf and page 11657 Q&A § _.22(b)(2) &(3)-5

**85. Should FHFA consider an alternative definition of "mixed-income?" For example, should FHFA incorporate minimum thresholds for the amount of housing affordable to very low-, low-, or moderate-income households in its definition?**

Just as with high opportunity areas, the approach of defining areas of concentrated poverty and identifying specific census tracts facilitates planning by the Enterprises and other stakeholders. NCRC supports a specific threshold for low- and moderate-income in mixed-income housing because it is important to ensure that a significant percentage of the units of a new or rehabilitated development can be available for long-term neighborhood residents of limited incomes or others with limited incomes.

## *Conclusion*

NCRC appreciates the opportunity to comment on the FHFA's proposed Duty to Serve rule. NCRC believes the the protracted conservatorship of the Enterprises and mandates imposed on them by FHFA, the U.S Treasury and the PSPAs and related policies undermine both the profitability of the Enterprises and necessarily conflict with and undermine their ability to carry out an efffective Duty to Serve rule, as well as the effective Affordable Housing Goals.

While an important complement to the Affordable Housing Goals, Duty to Serve and its framework can never be considered a substitute for the Affordable Housing Goals. The markets are different, necessiting different types of examination methodology.

Finally, NCRC acknowledges that FHFA listened to community concerns in the advance notices of proposed rulemakings on Duty to Serve and made improvements like adopting more ratings. However, a number of improvements still need to be made, such as increasing the rigor of the scoring system and numerical benchmarks, consistency in applying assessment factors, and increasing opportunities for public input in the development and evaluation of the Enterprises' Underserved Markets Plans.

Thank you for the opportunity to comment on this important matter. Please feel free to ask any questions or contact me at 202-628-8866 or jtaylor@ncrc.org.

Sincerely,

John Taylor
President and CEO
NCRC