March 17, 2016

Via Email to: RegComments@fhfa.gov

Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA27
Federal Housing Finance Agency
Eighth Floor
400 7th Street, S.W.
Washington, DC 20219

Re: Enterprise Duty to Serve Underserved Markets; Proposed Rule; 12 CFR Part 1282 (the "Proposed Rule")

Dear Mr. Pollard:

The Council of Large Public Housing Authorities ("CLPHA"), Reno & Cavanaugh, PLLC ("R&C") and the RAD Collaborative are pleased to submit comments on the Proposed Rule regarding "Duty to Serve" credit, as defined in the Proposed Rule, for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (together, the "Enterprises").

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. Our membership of more than seventy large public housing authorities ("PHAs") own and manage nearly half of the units in the nation's public housing program, administer more than a quarter of the subsidies in the Housing Choice Voucher program, and operate a wide array of other housing programs.

R&C is general counsel to CLPHA and also represents more than one hundred PHAs throughout the country on a wide range of matters, including hundreds of public housing redevelopment projects. R&C was founded in 1977 and over the past three decades the firm has developed a national practice that encompasses the full real estate, affordable housing, and community development industry.

The RAD Collaborative is a recently-formed coalition of interested practitioners working to successfully implement HUD's Rental Assistance Demonstration Program. Sponsored by CLPHA, and supported by the National Equity Fund, Housing Authority Insurance Group and other entities, Collaborative participants include public housing authorities and their partners, developers, lenders/investors, advisors, consultants and other interested parties.

Preservation

In response to FHFA's specific request for comment (page 79195), we very strongly encourage FHFA to interpret the term "preservation" to include Duty to Serve credit for Enterprise support of new construction projects where they replace existing subsidized multi-family properties. As the Proposed Rule points out, the nation's stock of affordable housing has been shrinking while the population has been growing. We would add that these trends have taken place during a period when housing affordability has also diminished significantly, as wages and incomes fail to keep up with rents in many housing markets. Further, much of the existing stock of affordable housing, particularly public housing, is now decades old and has reached the end of its useful life. In many cases, it no longer makes financial sense to use scarce capital funds in an attempt to upgrade or modernize these buildings instead of demolishing and replacing them through new construction. In addition, new construction offers the opportunity to redesign developments consistent with modern standards including energy-efficiencies, reduce density, provide necessary amenities, and promote income-mixing both on the original site and by transferring some units to other sites. Thus, we encourage FHFA to state explicitly in the rule that new construction to replace existing affordable housing assets is included in the definition of "preservation".

Rental Assistance Demonstration

We also strongly support FHFA's decision to include support for the Rental Assistance Demonstration ("RAD") as a Regulatory Activity under the Proposed Rule (page 79195). CLPHA was one of the leading advocates for legislation that would permit PHAs to convert their public housing properties to a Section 8 funding and regulatory platform, an effort which led to the enactment of the RAD program. We continue to work closely with HUD on RAD implementation issues to facilitate the recapitalization and conversion of the nation's public housing stock. New financial tools and resources, including those that could become available from the Enterprises through their Duty to Serve, are critical to RAD's success.

Long-Term Affordability

In response to questions #28 and #29 on page 7196, we also believe that FHFA should promote and incentivize long term affordability by (1) including an extended use requirement for 15 years beyond the term of the Enterprises' loan purchase for preservation activities, and (2) similarly, for new construction projects by requiring regulatory agreements that maintain affordability for at least an initial 30-year period, with bonus points for additional 15 year periods. In both cases, "affordability" should be targeted to extremely low- and very low-income households at rent levels consistent with the Section 8 program. Given the scarcity of funding for affordable housing, whether from appropriated funds or Enterprise activities, we believe it is critical for the federal government to leverage as much affordability as possible, in terms of duration or income levels, consistent with other federal policy priorities, including fair housing and income-mixing goals.

Low-Income Housing Tax Credits

The federal Low-Income Housing Tax Credit "(LIHTC") program has fully matured over the years and is now the primary affordable housing production program, with a market which is well functioning and generally competitive. If FHFA permits the Enterprises to re-enter the LIHTC market, then we would encourage their role to be focused on areas which are truly underserved or on particular types of projects that need additional benefits which involvement by the Enterprises could bring, particularly in terms of pricing advantages and loan products that would be coupled with equity investments. In our view, there could be important benefits in allowing the Enterprises to purchase LIHTCs for preservation projects that involve either significant rehabilitation or new construction of replacement housing, especially where the project owner is attempting to achieve certain other federal policy priorities.

A perfect example would be a large, obsolete public housing development, serving primarily extremely low-income families in a high-poverty, racially-concentrated area. For a PHA trying to address the redevelopment needs of such a project, every extra dollar that could be added to the development budget from Enterprise activity would be critical. This could be in the form of better LIHTC pricing or LIHTC equity combined with favorable loan products. Further, we think it is essential that the Enterprises use their resources and presence in the market to promote other federal goals. The current Administration has been quite clear that fair housing is a top priority, as shown by HUD's rulemaking on Affirmatively Furthering Fair Housing. PHAs share those fair housing goals, yet have been trapped in a situation where they have legacy projects in concentrated neighborhoods, but without the resources to carry out redevelopment plans that produce mixed-income housing on-site or off-site. To the extent that the Enterprises allocate resources to LIHTC investments and other forms, it should be to promote these goals.

Extra Credit for Residential Economic Diversity Activities

Consistent with the views we raise above regarding the Enterprises' potential investment in LIHTCs, we request that FHFA also take such targeted activities into account in the context of §1282.37 of the Proposed Rule, which addresses giving "extra credit" for Enterprise activities that promote affordable housing in a high opportunity area or mixed-income housing in an area of concentrated poverty. For PHAs, these are two sides of the same coin as they attempt to recapitalize physical assets while also seeking to advance fair housing and other social policy goals. Thus, directing Enterprise resources into challenging public housing redevelopment efforts would allow FHFA to achieve multiple federal priorities simultaneously.

Also, with respect to §1282.37 of the Proposed Rule, we concur with FHFA's decision to define "high opportunity area" in accordance with HUD's definition of a "difficult development area" and to define "area of concentrated poverty" as a "Qualified Census Tract (QCT)" as used in the LIHTC program.

Focus on 4% RAD Conversions

In addition, we urge FHFA to consider prioritizing the use of its resources for public housing preservation projects using 4% LIHTCs converting under RAD. A significant portion of RAD projects have moderate rehabilitation needs that could be addressed with 4% LIHTCs if they had access to favorable gap financing through loans or grants. An obvious advantage to using 4% LIHTCs is that they are non-competitive and that they essentially direct private activity bond volume cap into affordable housing rather than other sectors or allowing that volume cap to go unused. Modest resources from the Enterprises devoted to making 4% LIHTC work in these RAD projects could significantly accelerate the preservation of public housing assets through conversion to Section 8 under RAD, putting them on a solid, self-sustaining funding platform for a required affordability period that is essentially perpetual.

Guarantees

Question #45 (page 79199) asks for input on permitting the Enterprises to guarantee equity investments by third party investors. In the case of RAD transactions or other public housing preservation projects, we strongly encourage FHFA to permit such guarantees in order to make deals more efficient and to retain within the public side of the transaction as many resources as possible for future affordable housing use. For example, due to severely diminished capital funding from Congressional appropriations over the years, PHAs have increasingly relied on LIHTCs in redeveloping their properties and many have become quite proficient at it. However, because even the most sophisticated PHAs do not have strong balance sheets, they can be forced to leave significant resources in the project in the form of reserves, deferred fees, or delayed equity pay-in schedules, so that they can satisfy the guaranty and other obligations to third-party investors. If the Enterprises were permitted to guaranty third party investments directly, then funds could be freed up from closed transactions and devoted to other preservation projects, thus accelerating the pace of transforming the public housing stock.

Energy Efficiency Improvements

In response to Question 51 (page 79200) we believe that Enterprise support for multifamily properties that include energy improvements resulting in a reduction in the tenant's energy and water consumption and utility costs should be a Regulatory Activity.

We applaud FHFA for recognizing the energy and water efficiency improvements on existing affordable multifamily properties reduce housing costs, help maintain affordability for tenants, and therefore should be considered preservation. The proposed rule acknowledges that savings in utility consumption reduces expenses, helping to maintain the overall affordability of rental housing. By encouraging lenders to provide additional credit for energy improvements, Fannie and Freddie can lower operating costs and preserve existing affordable rental housing.

We urge FHFA to recognize the importance of reductions in owners' energy expenses in affordable housing and to make reductions in these costs eligible, as well as reductions in tenant expenses. Utility costs are the highest controllable operating expense in multifamily housing. Reducing consumption can significantly impact an owner's net operating income. This is especially important in existing, subsidized affordable housing (i.e. properties that receive any type of federal, state, or local subsidy) since such these properties tend to have smaller capital reserves than market rate multifamily housing. Counteracting rising energy costs may stabilize or increase property cash flow and may reduce loan default risk, thereby preserving affordable housing.

Mixed-Income Definition

FHFA includes a definition of "mixed-income housing" (page 79213) for purposes of awarding extra credit for "residential economic diversity activities". However, that definition would provide extra credit only for a project that serves very low-, low-, or moderate income households where at least 25 percent of the units are affordable only to households with income above moderate-income levels. We think that definition is unrealistic and far too skewed toward higher-income levels for it to benefit public housing preservation projects where income mixing is proposed. Current occupancy in public housing is heavily weighted toward "extremely low-income" households with incomes at less than 30% of the area median income ("AMI"), while eligibility for public housing is capped at 80% of AMI. Thus, significant improvements to current public housing income mixes can be achieved through recapitalization using Enterprise resources even within the public housing-eligible range. Income-mixing even at those levels, without trying to attract moderate income households, would have important social and economic benefits.

Other Activities

With respect to other products that encourage the preservation of existing, affordable, subsidized housing, we suggest the Enterprises be allowed to extend other financing products directly to public housing authorities, their partners, and mission-led nonprofit organizations needed to expand preservation activities that are not being met by conventional lenders. Such products could include lines of credit, acquisition financing, bundled acquisition-bridge-construction loans that can routinely be taken out with a modest, supportable loan-to-value permanent loan offered by conventional lenders, and other products not adequately offered in the marketplace to public housing authorities, their partners and other mission-oriented borrowers working to preserve affordable housing. To receive Duty to Serve credit, such lending products should include below-market interest rates, low transaction costs, and might include or leverage grants for credit enhancement and underwriting costs. These loans also should reduce or waive the requirements for Section 8 transition reserves. We would be pleased to work with the Enterprises in assessing the demand for and designing responsive products.

Thank you for the opportunity to comment on the Proposed Rule. If you have any questions, please do not hesitate to contact us.

Sincerely,

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