

March 14, 2016

Mr. Alfred M. Pollard, General Counsel  
Federal Housing Finance Agency  
Constitution Center  
Eight Floor  
400 Seventh Street SW  
Washington, DC 20219

**Attention: Comments/RIN 2590-AA27**

Enterprise Duty to Serve Underserved Markets – Proposed Rule

Dear Mr. Pollard:

On behalf of NeighborWorks America I want to thank the Federal Housing Finance Agency (FHFA) for the opportunity to provide comments regarding the Proposed Rule on the Enterprise Duty to Serve Underserved Markets.

Please note that these comments have not been submitted to or approved by NeighborWorks America's Board of Directors. These comments solely reflect the views of NeighborWorks America management and do not necessarily represent the views of its board members, either collectively or as individuals. These comments have been informed by conversations with representatives from a number of NeighborWorks America's network of more than 245 local and regional nonprofit-affiliated NeighborWorks organizations.

Our mission at NeighborWorks America is to create opportunities for people to live in affordable homes, improve their lives and strengthen their communities. As proposed, the Duty to Serve rule could play an important role in helping us and our network of strong nonprofit organizations achieve our goals. We are, therefore, pleased to support the general thrust of the rule.

There remains a challenging lack of access to credit in all three of the underserved markets covered under the proposed rule. As such, NeighborWorks America very much appreciates the time and effort that FHFA has put into crafting this proposed Duty to Serve rule which outlines many different approaches that the Enterprises could take to meet the needs of these underserved populations and communities. Our letter suggests some modifications to the proposed rule that should work to increase impact for these markets, creating more affordable homes and stronger communities.

NeighborWorks America consulted extensively with our network of NeighborWorks organizations in putting together these comments. NeighborWorks organizations are a driving force in creating homeownership and rental affordable housing opportunities in the United States. In FY 2015, NeighborWorks organizations assisted 355,900 families with their housing needs, including creating 21,700 new homeowners, owning and managing 142,600 units of

affordable rental housing, and providing counseling and education to 110,400 families buying a home and/or preserving a home. In FY 2015 alone, NeighborWorks organizations acquired, developed, and/or preserved 15,400 units of affordable housing. The NeighborWorks network also provides an extensive array of other services in their communities through resident engagement, economic development, workforce development, education, and health care programs and partnerships.

NeighborWorks organizations serve all three of the underserved markets covered in the Duty to Serve proposal. In FY 2014, two-thirds of all NeighborWorks organizations served rural Americans. Manufactured housing is not only included in the work of NeighborWorks organizations, but NeighborWorks also supports two manufactured housing social enterprises, Next Step, a company dedicated to building high quality, Energy Star-rated factory built housing, and ROC USA, a national initiative to transform privately owned mobile home parks into resident-owned communities. Additionally, NeighborWorks organizations are actively involved in affordable housing preservation activities, preserving 26,400 units through acquisition, refinance, and rehabilitation in the past three years alone.

### **Overall Comments on the Proposed Rule**

NeighborWorks has a number of general comments regarding the Duty to Serve rule that are not in response to the specific questions that FHFA poses.

*Public Input, Underserved Market Plans and the FHFA Plan Review Process §1282.32 (d)(4), (d)(5), 1282.32 (e), 1282.32 (f)*

NeighborWorks appreciates FHFA's desire to create a public comment period in order to increase transparency and opportunities for productive input into the Underserved Market Plans. The proposed rule requires that each Enterprise "make revisions to its proposed Plan ... in its discretion." We believe that the twin goals of transparency and productive input would be enhanced by an explicit requirement that the Enterprises not only review the public comments they receive, but that they take those comments into account when crafting their final plans, and that FHFA also review the public comments before commenting on the Enterprises' proposed plans.

*Enterprise Reports on Duty to Serve § 1282.66*

A further important addition to making the process transparent would be the public posting of the Enterprises' reports on Duty to Serve. This will serve to increase the Enterprise's accountability to the public, while also allowing the public to identify how the Enterprises are meeting their Plans. Understanding the Enterprises' performance under the Duty to Serve rules will allow stakeholders to make more informed and effective comments on subsequent Enterprise Duty to Serve Plans. NeighborWorks requests that the Enterprises' Duty to Serve annual reports be made public. They should be posted on both the Enterprises' and FHFA's websites.

*Investment and Grants Assessment Factor § 1282.32 (c)(3)*

Each Enterprise's Underserved Market Plan Objectives must incorporate one or more of four statutory assessment factors, including an Investment and Grants assessment factor. The proposed rule notes that FHFA is willing to consider credit for investments, but not for grants. NeighborWorks America asks that FHFA positively reconsider its intention to deny credit to the Enterprises for making grants.

In many cases, particularly in rural markets and when preserving existing or expiring affordable housing, housing operators need grants in addition to access to capital in order to best meet affordable housing needs. In these markets, there are often fewer government subsidies available, and fewer private funds available from philanthropic and corporate sources. Grants are often needed both for development and for operating purposes. On the development side, grants can subsidize the construction of affordable housing – helping to fill financing gaps – and can make home buying affordable through down payment and other home buyer assistance. On the operating side, grants are needed for sustainable operation of nonprofits, which provide important affordable housing assistance to underserved markets including homeownership counseling and real estate development. Should the Enterprises decide to provide grant funds to support these types of activities, they should receive credit as part of their Duty to Serve.

*Housing Counseling*

NeighborWorks and its network would like to emphasize the important role of housing and financial capability counseling in creating sustainable homeowners in the three underserved markets covered under Duty to Serve. There are distinct advantages for borrowers and for the Enterprises when homeowners build their financial capability, and can then remain in their homes and make timely payments on their mortgages.

An independent evaluation of the NeighborWorks pre-purchase program by researchers Neil Mayer and Associates and Ken Temkin using Experian data (released in March 2013) evaluated 75,000 mortgages originated between 2007 and 2009. It found that borrowers receiving NeighborWorks pre-purchase counseling were one-third less likely to fall 90 or more days behind on their mortgages in the first 2 years. These reductions in delinquencies were the same for first-time and repeat buyers. The results of the Mayer/Temkin evaluation are consistent with an April 2013 Freddie Mac study which found that counseling reduced the first-time homebuyer delinquency rate by 29%.

FHFA should encourage the Enterprises to support high-quality homeownership counseling as part of the Duty to Serve rule and in all the Enterprises' business activities. In this rule, in particular, focus should be especially placed on incorporating counseling with manufactured housing and shared equity products. Counseling is beneficial when applied in conjunction with many kinds of housing opportunities, but can affirmatively enhance the sustainability of housing in these more specialized lines of business.

## **Extra Credit for Qualifying Residential Economic Diversity Activities (§ 1282.37)**

### *Question 6*

FHFA asks if the Enterprises should receive extra credit for promoting residential economic diversity activities. NeighborWorks America supports efforts to promote residential economic diversity as an important aspect of improving the lives of all Americans. As we now know from the work of Dr. Raj Chetty and others, economic diversity is one of the important factors that can lead to improvements in educational attainment, earnings, and neighborhood stability. It can also increase environmental sustainability when residential areas are then closer to public transportation and jobs.

It is also important to include manufactured housing communities within this category. In some areas of the country, manufactured housing may provide affordable housing in higher opportunity communities. For instance, network organizations working to preserve existing manufactured home communities in the Twin Cities of Minneapolis and St. Paul, in Denver, in the Boston area, and in Silicon Valley are maintaining residential economic diversity in high opportunity areas. NeighborWorks asks that FHFA further explore data that will provide a proxy for resident income in those communities so that these communities can be included in receiving extra credit under Duty to Serve.

### **Manufactured Housing Market**

#### *§ 1282.34 (d) (1)*

In § 1282.34 (d) (1), the rule proposes to give credit in the preservation market for the purchase and securitization of loan pools from Community Development Financial Institutions (CDFIs). NeighborWorks America strongly supports this proposal, and would also like to see a similar provision applied to the manufactured housing Duty to Serve provisions, as CDFIs serve this market as well.

### *Question 13*

In question 13, FHFA seeks comment regarding whether the Enterprises should receive credit for the purchase of chattel loans, and if so, how these loans could be made safer for purchase by the Enterprises and safer for borrowers. NeighborWorks America recognizes that the institution of chattel property has its pitfalls, and that owning real property is preferable. However, chattel property constitutes a large proportion of manufactured homeownership, and there is a continued need for responsible lending in this market. NeighborWorks America is therefore supportive of efforts to encourage the Enterprises to reenter the market for chattel loan purchases. This could best be done on a pilot basis with a rigorous evaluation built into the program design, allowing each Enterprise to best understand the necessary components to design a successful chattel loan purchase program. A pilot program could be conducted responsibly and sustainably if paired with nonprofit counterparties and housing counseling services for all participating borrowers. The provision of high-quality housing counseling provided by NeighborWorks organizations or other HUD housing counseling certified organizations would lower the risks both for the Enterprises and for borrowers. Similarly, the pilot should include the lease protections enumerated in the proposed rule such as tenants' right to collectively engage with the owner, and minimum one-year lease terms, in order to protect residents.

*Question 17*

In question 17, FHFA seeks comment on the 150 pad limit for eligible small manufactured housing communities. To protect residents, FHFA should focus its attention on manufactured housing community ownership instead. While government-, nonprofit-, or resident-owned manufactured housing communities tend to maintain affordability and offer tenant protections, there is no indication that these same benefits are correlated to the number of pads in privately-owned, for profit manufactured housing communities. We would further suggest that it is not difficult for small manufactured housing communities to adopt the tenant protections outlined in § 1282.33(c)(2)(iii). We would propose that Duty to Serve credit be given for the purchase of loans to manufactured housing communities with tenant pad lease protections or for government-, nonprofit-, and resident-owned communities. The size of the community alone should not qualify a community for Duty to Serve credit.

*Question 25*

In question 25, FHFA seeks comment regarding manufactured housing community acquisition loans. Consistent with our response to question 17, FHFA should tie Duty to Serve credit to the ownership of the community and/or on the presence of tenant protections. If communities are government-, nonprofit-, or resident-owned, or if proper tenant protections are in place, then the public should have a higher degree of confidence that the residents of the community are not affected negatively by a community acquisition loan. Having these criteria in place should allow the purchase of such loans to receive Duty to Serve credit.

*Question 26*

In question 26, FHFA seeks comment regarding manufactured housing community refinance loans. While it is true, as the question implies, that refinance loans may decrease costs for community owners, it is unclear if the debt service savings for owners would benefit the residents of the community. It seems that a private owner, in the business of increasing profits, would have limited motivation to share cost-savings with the tenants. We would support Duty to Serve credit for refinance loans to communities owned by public entities, nonprofit entities, or the residents themselves. If communities are government-, nonprofit-, or resident-owned, then it is likely that cost-savings for the owner would be related to benefitting tenants. NeighborWorks asks FHFA that only purchase of refinance loans for government-, nonprofit-, or resident-owned communities receive Duty to Serve credit.

**Affordable Housing Preservation Market**

*Question 29*

In question 29, FHFA seeks comment regarding the inclusion of newly constructed housing within the definition of affordable housing preservation under the Duty to Serve. NeighborWorks recognizes that there is a great need for affordable housing throughout the country, and an insufficient supply to meet the current demand. However, we would be concerned that granting Duty to Serve credit for the purchase of new affordable housing loans would dilute the intent of the statutory provision and distract from the important effort to bolster lending for traditional preservation projects. Financing the preservation of subsidized, affordable housing is complex and often challenging. If new affordable housing were to be included in the preservation market,

we would argue that it be limited to new affordable housing in areas of particular targeted need, such as the areas defined in the rural market section of the proposed rule.

*Question 30*

FHFA asks for comments on other ways that the Enterprises can support affordable housing preservation lending. One additional method would be through the disposition of REOs owned by the Enterprises. Responsible disposition of REO properties at meaningful discounts to nonprofit developers through the Neighborhood Stabilization Initiative should also be an activity eligible for Duty to Serve credit. Nonprofit purchasers will make needed repairs, and will sell or rent the properties at affordable rates to lower income residents, thereby preserving affordable housing in many distressed neighborhoods.

*Question 41, 42, 43 and 44*

FHFA poses a number of questions about whether it should permit the Enterprises to resume Low Income Housing Tax Credit (LIHTC) investments. NeighborWorks America supports the Enterprises resuming LIHTC investments, especially in areas where the LIHTC investment market continues to be weak. In most areas of the country, other investors have “filled the gap” created by the exit of the Enterprises from the LIHTC market, and prices per tax credit are quite strong. In fact, some NeighborWorks organizations expressed concern that a re-entry of the Enterprises into these markets could create too much competition, pushing prices per credit up too high, and leading current investors to exit the market.

We would also support FHFA’s suggestion in *Question 42* that Enterprise LIHTC investment should be limited to markets outside of the Community Reinvestment Act assessment areas of large banks and in rural markets. In these areas, Enterprise investment would materially benefit projects. NeighborWorks organizations in these places report that it is still a challenge to find LIHTC investors, and that prices per credit dollar are considerably lower. Alternatively, FHFA could also consider providing credit under the Duty to Serve rules for LIHTC investments only in these areas of particular investment need.

Conversely, NeighborWorks does not agree that it would be useful for the Enterprises to limit LIHTC investments only to those that promote residential economic diversity, or to those projects with expiring subsidies. Enterprise capital investments in low-income areas could help spark redevelopment and opportunity in those places. Enterprise investments in LIHTC for new construction or for the recapitalization of currently unsubsidized properties are potentially important for the revitalization of low-income communities and for the well-being of the residents. However, Enterprise investments in rural markets and those outside large bank CRA assessment areas are also critical.

There are several other conditions which would enhance the benefit of the Enterprises’ LIHTC investments. First, the rules should allow the Enterprises to increase the scope of LIHTC investments in the case of an economic downturn and/or if other investors exit the market. We recommend that the Underserved Market Plans and evaluation remain flexible enough to adjust in that event. Second, if the Enterprises were to reenter the LIHTC market and then exit at some

future date, there should be consideration to do so through an orderly wind-down in order to prevent additional damage to the real estate market.

Third, the Enterprises should be required to conduct their disposition of their current LIHTC investments at “Year 15” in a responsible fashion which does not do damage to the long-term sustainability of projects. The Enterprises should focus foremost on assuring that the properties can remain as affordable housing following disposition. The Enterprises should not drain valuable project resources to provide short-term returns, and instead they should maintain adequate operating reserves within the projects so that the units can be preserved as affordable housing for many years to come.

Finally, NeighborWorks and its network would like to strongly encourage FHFA to explore allowing the Enterprises to consider other kinds of equity investments in affordable housing in addition to LIHTC investments. There is a significant need in the market by nonprofits for short to mid-term (10 year) investments that would support the purchase of both subsidized and unsubsidized affordable housing in order to preserve this product from being lost to the marketplace.

*§1282.34 (d) (2) (Energy and Water Efficiency Improvements for Multifamily)*

§1282.34 (d) (2) provides Duty to Serve credit for Enterprise support of energy and water efficiency improvements on existing multifamily properties. While NeighborWorks supports this effort, we are wary of the requirement that reduced utility costs must not be offset by higher rents or other charges, and that reduced utility costs offset upfront costs of improvements. NeighborWorks notes that this section of the rule does not address whether it is the tenant or the property owner paying utility costs, and that this distinction is the cause for our concern.

If a property owner pays all utilities, then NeighborWorks agrees that the reduced utility costs offset upfront costs of the improvements. If, however, tenants are paying their own utility costs in a property, there is no reduction in costs for the property owner for offsetting the cost of improvements. In such a scenario, NeighborWorks sees it essential for property owners to offset the cost of improvements through either a rent increase or other charges so long as tenants are not paying significantly more in total housing costs (rent plus utilities) than what they were paying before their reduction in utility costs. Without such ability, vital energy efficiency improvement work may not be economically feasible for property owners.

*Question 47*

FHFA asks whether the Enterprises should receive Duty to Serve credit for purchasing loan pools from CDFIs that are backed by small multifamily properties. NeighborWorks America encourages Duty to Serve credit for those purchases. We also would recommend that FHFA grant Duty to Serve credit for Enterprise sales of distressed loan pools of single-family mortgages to mission-based lenders in distressed areas. Finally, we would encourage Enterprise investment in CDFIs that are lending for acquisition and rehabilitation in distressed areas. These are additional viable methods for the Enterprises to support preservation of existing affordable housing through partnerships with CDFIs and targeted loan pool sales to mission-based investors.

#### *Question 64*

FHFA asks if there are additional ways that the Enterprises could support long-term affordable homeownership preservation. NeighborWorks commends FHFA for its consideration of shared equity and shared appreciation models in preserving affordable homeownership opportunities, and for encouraging the Enterprises to find ways to purchase shared equity and shared appreciation loans. A number of NeighborWorks organizations across the country have successful shared equity and shared appreciation programs, and have found them very valuable in maintaining long-term affordable homeownership. As noted earlier in our comments, the sustainability of homeownership in shared equity and appreciation loans is enhanced by housing counseling and should be strongly encouraged through the rule.

#### **Rural Housing Market**

#### *Question 70*

FHFA asks for comments regarding the rural definitions laid out in the proposed rule. Our NeighborWorks organizations have pointed out that there are some areas, particularly small rural towns, left out of each of the four definitions proposed. At the same time, NeighborWorks organizations commented that some of the definitions include too many suburban regions which are not part of truly underserved rural areas. NeighborWorks recognizes the extremely difficult nature of creating an optimal rural definition. We urge the FHFA to rely on the research of the Housing Assistance Council (HAC) on this matter. NeighborWorks partners with HAC on many rural issues, and utilizes a definition of rural areas conceived by HAC to evaluate our own work in rural areas.

#### *Question 73*

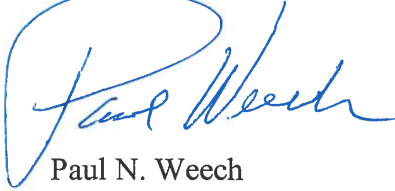
With regard to what specific activities would provide liquidity and other support to high needs rural regions and populations, NeighborWorks America and its network suggest that FHFA give extra credit for Enterprise activities that serve high needs rural regions and populations. Each of these regions and populations requires specific and different tactics to overcome their unique barriers to liquidity and the development and maintenance of affordable housing. The added incentive of extra credit under Duty to Serve may be able to spur the Enterprises to develop primary market partners and the programs of support required to make a real difference in these high needs communities.

#### **Closing**

NeighborWorks America applauds FHFA for releasing a thoughtful and wide-ranging proposed rule on Duty to Serve. We are very encouraged by the potential impact that this rule could have in contributing to increased access to credit for underserved markets and improving the lives of the people and their communities. We would like to close by encouraging FHFA to continue support for affordable housing through Enterprise contributions to the Housing Trust Fund and the Capital Magnet Fund, and continue its work in looking at ways to modernize the Affordable Housing Program of the Federal Home Loan Banks. These sources of funds will further the

important work of supporting affordable housing that FHFA is also undertaking through the Affordable Housing Goals and the Duty to Serve rule. We look forward to working with FHFA and the Enterprises towards the goal of providing affordable, sustainable housing for Americans across the country.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul N. Weech". The signature is fluid and cursive, with a large initial "P" that loops back around the start of the name.

Paul N. Weech  
President and CEO  
NeighborWorks America