Alfred M. Pollard
General Counsel
ATTN: Comments/RIN 2590-AA27
Federal Housing Finance Agency
400 7th Street SW
Fourth Floor
Washington DC 20219

Re: Enterprise Duty to Serve- Notice of Proposed Rule Making Request for Comments
Comments/RIN 2590-AA27

Dear Mr. Pollard:

The Local Initiatives Support Corporation (LISC) is pleased to submit the following comments in response to the Federal Housing Finance Agency's (FHFA) request for comments on the proposed Duty to Serve rule for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), collectively known as the government sponsored enterprises (Enterprises or GSEs).

LISC strongly supports the efforts of Congress and FHFA to expand the mission and regulation of the Enterprises beyond the affordable housing goals that have been in place since 1992. LISC provided comments to the 2009 Advanced Notice of Proposed Rule Making and the 2010 Proposed Rule Making. We applaud the thoughtful and creative approaches to underserved markets that are reflected in the most recent proposed rule, particularly the inclusion of manufactured housing communities and affordable housing preservation programs, developed after the enactment of the Housing and Economic Recovery Act of 2008 (HERA) such as Choice Neighborhoods and the Rental Assistance Demonstration. Established in 1979, LISC is a national nonprofit with a Community Development Financial Institution (CDFI) designation, dedicated to helping community residents transform distressed neighborhoods into healthy places of choice and opportunity – good places to work, do business and raise children. LISC mobilizes corporate, government and philanthropic support to provide local community development organizations with loans, grants and equity investments; as well as technical and management assistance.

LISC has local offices in 30 cities and partners with more than 70 organizations serving rural communities throughout the country. We focus our activities across strategic community revitalization goals, including expanding investment in housing. Our national Housing program facilitates the development and preservation of affordable rental apartments (including those whose uses are in jeopardy because of expiring federal subsidies) by providing financing and technical assistance, and by helping nonprofit community development corporations (CDCs) build partnerships with housing authorities and other organizations. Our Rural LISC program provides resources to rural CDCs to address the complex housing needs of rural communities including tribal areas and colonias. Rural housing strategies often incorporate manufactured housing and the preservation of existing affordable housing.

Based on our experience as a lender, equity investor, grant maker and technical assistance provider in underserved markets, we offer the following comments, which are numbered to correspond to the questions presented in the Notice.

1. UNDERSERVED MARKET PLANS AND REVIEW

A. Section of Activities (RFC 1-3)

FHFA's proposed approach, which lays out a set of Regulatory Activities in addition to the activities and programs articulated in the amendments to the Safety and Soundness Act of 1992 made by HERA, is a sensible one. The Enterprises should be allowed limited discretion in determining how to serve underserved markets using the Statutory and Regulatory Activities as defined in the notice. Statutory Activities should be addressed in the underserved market plans and through Enterprise activities unless there is a compelling reason that it is not feasible to do so. Additional discretion may be appropriate for Regulatory Activities; however an Enterprise's selection of activities should be considered both on an individual activity basis and for how the activities collectively serve underserved markets. A plan that omits several Core Activities is unlikely to serve markets in the manner contemplated under the statute. While we advocate for a limited universe of Regulatory Activities and limited discretion in the first planning and compliance cycle, we encourage FHFA to review the current activities for their effectiveness during and after the first cycle and make modifications as appropriate.

B. Objectives and Assessment Factors (RFC 4-6)

We generally support the objectives included in the proposed rule. We would like to echo our support for comments raised by the Corporation for Enterprise Development (CFED) that emphasize the importance of technical assistance under the outreach factor. We would further emphasize the importance of not only providing technical assistance, but building capacity in underserved markets so that the markets are strengthened by the lasting capabilities of the institutions and agencies that serve them. Like CFED, we recognize that the Enterprises may not be in the position to fund technical assistance or capacity building at this early stage, but we urge the Enterprises to encourage these activities wherever possible, including through support for CDFIs that couple their lending and investments with deep technical assistance and capacity building.

We also support the award of a limited level of Duty to Serve credit for research and development, particularly in the rural and manufactured housing markets. We support CFED's recommendations regarding research on manufactured housing.

LISC supports the notion of Enterprise support and Duty to Serve extra credit for products and activities that promote economic diversity within the three statutory underserved markets designated by HERA: affordable housing preservation, manufactured housing, and rural housing. While we applaud FHFA for recognizing the importance of supporting economic diversity, we recommend caution with respect to the proposed definitions of high opportunity communities and community revitalization plans. FHFA proposes to use HUD's Small Area Difficult to Develop Area (DDA) to define high opportunity areas. Small Area DDAs are a poor measure of opportunity as they focus primarily on construction costs and not on other critical elements of opportunity such as transit, education and safety. Given the challenges in identifying accurate indicators of opportunity that may be applied and tracked nationally, we encourage FHFA to defer to definitions of high opportunity used at the individual state level.

FHFA also proposes to award extra Duty to Serve credit for mixed income housing in areas of concentrated poverty and seeks comment on the definition of mixed income. Mixed income development may not be viable or the most effective means to stimulate development in some communities and identifying a level of income mixing that is adequate and beneficial is challenging. We urge FHFA to focus instead on awarding extra credit for support of areas where reinvestment is taking place. As noted in the proposed rule, state and local definitions of community revitalization plans vary. While varied definitions are challenging, their use is not impractical and some level of flexibility and tailoring to local conditions is appropriate. As with the definition of high opportunity neighborhood, we encourage FHFA to defer to the definition of high opportunity employed by state and local housing agencies and refrain from imposing one static, standardized definition as part of the Duty to Serve rule. In developing parameters for determining whether activities are part of a revitalization plan, we encourage FHFA to provide flexibility in the definition to avoid the unintended effect of redlining certain communities because of the lack of a formal revitalization plan.

Any extra credit structure and evaluation should promote residential economic diversity while investing in both high opportunity communities and areas of concentrated poverty. We encourage FHFA to use this first planning cycle to evaluate the Enterprise's reach to the underserved markets in general, and how extra credit incentivized support of residential economic diversity so that it may continue to refine definitions in future planning cycles.

C. Public input (RFC 9)

Public input should be sought on the proposed Underserved Markets Plans. Stakeholders in the underserved markets are best suited to provide input on the potential efficacy of plans designed to serve those markets. The Enterprises should be encouraged to engage with stakeholders prior to and during the formulation of their plans to reduce the need for significant comment and change after publication of the draft plan. We note that the proposed rule provides that FHFA will provide the Enterprise with its comments on the Enterprise's draft plan within 60 days of the end of the public comment period. It is unclear from this guidance whether during this 60-day period the Enterprise will have an opportunity revise its plan to address public comments or whether FHFA's comments will incorporate any public comments. We encourage FHFA to provide a clear and adequate timeframe for the Enterprises to evaluate and incorporate public comments before FHFA reviews and comments on the plan.

2. MANUFACTURED HOUSING

A. *Titling and Manufactured Housing*

In rural and urban communities' throughout the country, LISC and its nonprofit partners see the significant role that manufactured housing plays in meeting the housing needs of some of the communities' most vulnerable residents. While manufactured housing provides a safe and affordable home for many families, their stability is threatened by a lack of available forms of financing, the general physical condition of the stock and the potential for high utility. As guidance for the award of Duty to Serve credit for the purchase of manufactured housing loans is established, we urge FHFA and the Enterprises to consider how Duty to Serve criteria can serve these communities not only by facilitating financing on fair and favorable terms, but also by supporting improvements to physical standards with policies such as recognition of energy efficiency in appraisals and underwriting. Underwriting and appraisal standards established by the Enterprises could help drive standards that will ultimately help improve the health and efficiency of manufactured housing for the larger market.

Enterprise support for manufactured home loans titled as real property should be a Regulatory Activity. We favor real property titling over personal property titling for the reasons cited in the proposed rule, including but not limited to greater stability and protections for residents. The Enterprises can play an important leadership role in creating standards for titling this important source of affordable housing as real property and in shifting financing away from chattel financing and towards mortgage products.

While the Enterprises should play a leadership role in developing standards for titling and financing manufactured housing as real property, we recognize that a large portion of the manufactured housing stock is and will continue to be financed as chattel. For this reason, we encourage FHFA to permit the Enterprises to develop a pilot for the purchase of chattel finance loans that would drive the creation of standards for tenant protections and financing terms. We support CFED's suggestion that a chattel pilot be pursued in mission-driven communities. As CFED notes, these communities are developed or purchased with the needs of homeowners in mind. We further support CFEDs suggestions regarding the development of the pilot program and collection of data.

B. Regulatory Activities and Duty to Serve Credit (RFC 11-13)

As noted above, we strongly support the inclusion of support for manufactured homes titled as real property as a Regulatory Activity. The Enterprises should leverage their role in the markets to promote and advance the conversion of costly personal property loans to real estate mortgage and to spur the participation of other lenders. In addition, to credit awarded for the purchase of mortgages, the Enterprises should be eligible for Duty to Serve credit for investments made in CDFIs that lend and invest in manufactured housing units. CDFIs are mission driven investors and lenders that operate where traditional markets do not. Mission focus is often coupled with deep local knowledge that has helped CDFIs build a record of success. Treasury certification and access to low cost funding positions allow CDFIs to serve asset classes like manufactured housing.

While targeting borrowers with high coupon rates or maturing chattel mortgages may have the greatest impact for individual borrowers, in order to serve the market, Duty to Serve credit should apply to the purchases of all loans to very low, low and moderate income households for manufactured homes titled as real estate. Enterprise purchase of all such loans will help drive the emergence of standard titling requirements and underwriting terms and thereby improve service to the market. While we prefer real property titling, as noted above we recognize that chattel financing will likely continue to play a significant role in the market. Duty to Serve credit should be provided for loans made through a chattel pilot designed to help develop underwriting that create an affordable product with consumer protections that is also a sound investment for the Enterprises. Pilots would be developed with a goal of eventually creating safe and permanent chattel lending products. As the Enterprises develop a pilot to address some of the consumer protection and soundness concerns highlighted in the notice, we encourage the Enterprises to consider the inclusion of homebuyer education and counseling in any pilot program.

C. Manufactured Home Communities (RFC 16-19, 24)

We support the award of Duty to Serve credit for Enterprise support of manufactured housing communities (MHC), which expands the reach of the rule and may help provide protection and security to a greater number of homeowners. We echo CFED's comment that any blanket loan program for which Duty to Serve credit is awarded should permit the use of Enterprise funding for upgrade of community infrastructure, which can be a critical element of preservation strategies.

i. Community Size

We share the reservations expressed by other commenters about the availability of Duty to Serve credit based solely on a community size of 150 pads or fewer. While in LISC's experience, manufactured housing communities that serve low and moderate-income families have far fewer than 150 pads and while these small facilities presumably face more challenges in attracting capital, we are not comfortable that size alone is an indicator of an underserved market. Further, we share concerns expressed by other commenters that among the three Regulatory Activities options for serving manufactured home communities, the Enterprises would accept credit for support of small, but high performing communities at the expense of other activities. Small, well-located communities may have ready access to capital while in weaker markets MHCs may struggle to access capital regardless of their size. We support CFED's suggestion that FHFA consider an approach that includes geography and poverty based metrics rather than size to isolate underserved markets.

ii. Tenant Protections

We applaud FHFA for recognizing the importance of protections for tenants. We support strong tenant protections, but are mindful that onerous mandatory protections could have a chilling effect on use of Enterprise supported loan products. While tenant protections should be strongly encouraged for all MHC loans, we support the award of credit for the purchase of loans made to MHCs owned by mission-driven owners or that meet a well tailored geographic and poverty driven metric of an underserved market even where tenant protections are not included. To facilitate maximum participation in tenant protection requirements, we are in favor of CFEDs recommendation for use of a standard lease or lease addendum that outlines tenant protections. We anticipate that to be most effective in implementation, an addendum will be needed to address conflicts with state law and tenant protections. We encourage the Enterprises to evaluate state law protections to determine whether notice periods or other protections should be modified to be consistent with common state level protections, or conversely, should include provisions permitting preemption by state law.

iii. Geographic Focus

The Enterprises should take steps to target manufactured housing activities and assistance to areas of persistent poverty as defined by the United States Department of Agriculture. Manufactured housing represents a critical source of housing in these communities. Outreach to lenders, available waivers of underwriting criteria for loans to be purchased and homeownership counseling should be targeted to persistent poverty areas. The Enterprises should coordinate with government agencies and remain engaged with governmental efforts and programs to target assistance to areas of persistent poverty.

3. AFFORDABLE HOUSING PRESERVATION

A. Support for Preservation Generally (RFC 27-29)

We applaud FHFA's thoughtful approach to identifying opportunities to fulfill the duty to serve underserved markets and we appreciate the recognition of the housing affordability crisis created by a growing population and a diminishing affordable housing stock. Given the critical need for affordable housing, it is vital that available policy tools be utilized in a manner that maximizes the preservation and creation of affordable housing. With respect to defining the universe of preservation activities, we take the view that Duty to Serve activities will have the greatest impact if credit is generally limited to the purchase of loans for the preservation of existing housing under the statutorily enumerated programs or replacement housing rather than new construction, with limited exceptions as described below.

As acknowledged in the proposed rule, preservation of affordable housing is generally understood to include the refinancing and/or recapitalization of units that are currently affordable to low and moderate income families, including preventing the conversion to market of restricted properties at the end of a restricted use period. This understanding of preservation as relating to existing subsidized housing has applied broadly across housing legislation and HUD programs, including but not limited to the Emergency Low Income Housing Preservation Act of 1987, the Low Income Housing Preservation and Resident Homeownership Act of 1990 and HUD's Office of Affordable Housing Preservation (now known as Office of Recapitalization).

It is important to focus on the definition of preservation that was widely understood in the context of the bill's passage: the preservation of rental housing that is affordable to very low-income and low-income populations. The federal programs listed in HERA are all federal rental or mortgage subsidy programs for rental housing, primarily serving extremely low-income (ELI) households (those earning less than 30 percent of median income, who in most cases cannot be served without some form of rental subsidy).

Financing the preservation and recapitalization of subsidized and/or restricted affordable housing presents special underwriting considerations that can limit access to capital for these transactions. Rent levels limited by subsidy programs and use restrictions, risk considerations related to the tenants and developers and other factors require labor intensive underwriting of financing. The complexity of these transactions and the limitations on funding fees under some federal programs make these transactions less attractive to conventional lenders.

We believe that preservation of affordable housing is served by the purchase of mortgages that finance existing properties assisted or financed under these programs. Such mortgages may be refinancing loans, but may also be construction loans that finance the substantial renovation of the property. In some circumstances, subsidized or restricted affordable housing cannot be preserved in its current state and the subsidy or use restricted units are preserved by transferring them to another property, which may include the construction of units on such a property. Purchase of construction and refinancing loans for such transactions that preserve an existing subsidy or restriction should be eligible for Duty to Serve credit as a preservation transaction.

In order for an Enterprise to receive Duty to Serve credit for the purchase of a loan, the underlying property should have an affordability restriction or binding subsidy contract that continues for at least fifteen years beyond the closing date. This requirement will ensure that the transaction actually serves the preservation of affordable housing, rather than just providing better financing terms to a property that may soon be unrestricted and able to convert to market rate rental.

B. Support for Statutorily Enumerated Programs (RFC 30-34, 37-38)

i. Section 8

Section 8 is the most common subsidy in preservation transactions and the number of Section 8 transactions has increased with the introduction of the Rental Assistance Demonstration (RAD) program and other smaller preservation initiatives. As noted in the proposed rule, the Enterprises already purchase loans on properties supported by Section 8. The GSE practices have driven underwriting standards for the industry. Current underwriting practices penalize the properties for appropriations risk- the risk that Congress will not appropriate funds for the continued funding of a long term Section 8 contract. To mitigate this risk large transition reserves are required. These large reserves make transactions more costly and in some cases are viewed as available resources that can cause a project to lose additional grant funds creating funding gaps. The Enterprises should look to FHA underwriting standards, which recognize Section 8 rents, up to market comparables, for the term of the renewed contract without a transition reserve. While funding for discretionary programs is constrained, Congress has a long history and continued commitment to funding the renewal of existing obligations for rental assistance, making the appropriations risk relatively low.

ii. *Section 236*

In addition to the Enterprises' programs to purchase refinanced mortgages on Section 236 loans where the interest reduction subsidy continues, the Enterprises should support the preservation of Section 236 programs by developing products and underwriting standards that recognize rent restrictions and tenant protection requirements. In many 236 projects, rents for units not assisted by Section 8 have not been increased for many years. These rents are far below market and below even the affordable rent levels set by low income housing tax credit (LIHTC) and HUD programs. When preservation and recapitalization occur, through the second component of RAD or through other prepayment and preservation authority, a rent increase is needed to support new financing. HUD typically requires that the owner phase in the increase at ten percent per year for a set number of years. In these cases, loans are often written with only the first ten percent increase and then a smaller annual increase factor, rather than assuming the approved phase in of rents at ten percent per year. These standards constrain the loan proceeds available to recapitalize and preserve the property. By establishing guidance that would permit the purchase of loans that recognize rent phase ins designed to protect tenants, the Enterprises could better facilitate the preservation of these properties.

iii. *Section 221(d)(4)*

Mortgage loans insured under Section 221(d)(4) are not limited to affordable housing, though many affordable housing projects have been financed with Section 221(d)(4) loans. Loans insured under this section are often used for the preservation of affordable housing where substantial rehabilitation is needed. The purchase of refinancing loans for properties financed or insured under Section 221(d)(4) and subject to a long-term affordability restriction or rental assistance contract should be eligible for Duty to Serve credit, but the purchase of loans refinancing Section 221(d)(4) loans without affordability restrictions should not be eligible for credit.

The Enterprises could support the preservation of affordable housing previously financed with Section 221(d)(4) loans by providing clarity and flexibility in treatment of subordinate debt. Affordable properties financed with Section 221(d)(4) loans were new construction or substantial rehabilitation projects and in many cases subordinate financing was required in order to meet all construction costs and to maintain affordability in these projects. HUD requirements for subordinate financing permit payments only from surplus cash meaning that properties with Section 221(d)(4) loans to be refinanced often have significant unpaid subordinate debt that must remain in place to ensure continued affordability. We urge the Enterprises to facilitate the preservation of these properties by developing products and guidance that include practical treatment of resubordinated debt in the underwriting of the loan.

iv. *Section 202*

While as the Notice states, many Section 202 direct loans are refinanced with FHA insured loans, many would benefit from non-FHA loans. Most Section 202 loans require HUD consent for prepayment and consent is conditioned upon execution of a long-term use agreement. Purchase of loans refinancing such property should be eligible for Duty to Serve credit. There is a small universe of Section 202 properties that do not require HUD consent or a use agreement for prepayment and as such, refinancing does not ensure preservation. Purchase of loans on former 202 properties without a use agreement should not be eligible for DTS Credit.

Many Section 202 loans have already been refinanced, but given continuing low interest rates are now pursuing a second refinance to further recapitalize the property or preserve affordability by lowering operating costs. Provided that the property will be subject to a continuing use agreement, purchase of a re-refinancing loan should be eligible for Duty to Serve credit.

Preservation of Section 202 properties with Section 8 could be improved by developing underwriting guidance consistent with FHA treatment of Section 202 loans. In recognition of the historic challenges of operating Section 202 properties, Section 202 properties that benefit from a Section 8 contract are eligible for “exception rents” that may exceed comparable market rents. FHA will underwrite a 202 refinancing loan to these above market rents. Since by statute, a property financed with a non-FHA insured loan and ALL Section 202 properties that prepay with HUD consent are eligible for these exception rents, the Enterprises should develop standards that, like FHA, permit Section 202 refinance loans to be underwritten to above market rents reflected in a long term Section 8 contract.

We also encourage the Enterprises to review underwriting guidelines for the treatment of tax abatements and exemptions in the loans that they purchase. Nonprofit ownership is a requirement of the Section 202 program. Many localities have supported nonprofit owned affordable housing with property tax exemptions or abatements. These tax benefits can be critical to achieving affordability, but if they are heavily discounted in underwriting the preservation financing available to the property is constrained. FHA has recently made updates to its underwriting requirements to more fairly value exemptions and abatements in a sound manner. We urge the Enterprises to consider similar standards for tax abatement and exemptions on Section 202 refinancing loans and all preservation loans that they purchase.

v. *Section 515*

Section 515 loans are direct loans from the United States Department Agriculture Rural Housing Service (USDA RHS). The program produced a large number of rural rental housing developments with 30-40 year loans between the early 1970s and the mid-1990s. Preservation of the properties is challenging because of their small size, low incomes of residents, short-term rental assistance contracts and limited interest by lenders and investors. Successful preservation of Section 515 properties requires flexibility on the part of the borrower, lender and USDA.

One of the challenges to preservation of Section 515 loans is that the Section 521 rental assistance that accompanies those loans terminates when the loan is paid in full. In order to continue the rental assistance and defray preservation costs, Section 515 loans are frequently reamortized and subordinated to new financing. The enterprises can serve rural markets and this critical source of rental housing by affirmatively developing 515 refinancing products that recognize these structuring challenges and seeking to purchase these loans. One flexible lending product already available for Section 515 preservation is the Section 538 Guaranteed Rural Rental Housing Program, through which USDA RHS provides guarantees for loans made to developers by commercial lenders for the construction of low- and moderate- income tenants in rural areas. Section 538 loans can be combined with other financing sources and is used to guarantee permanent financing or a combination of construction and permanent financing. The Enterprises are already authorized to purchase 538 loans. We urge them to prioritize the purchase of Section 538 loans used to refinance Section 515 properties.

Another challenge to the preservation of Section 515 properties is the small size of the projects. The average number of units in pre-1989 Section 515 projects, the cohort most in need of preservation, varies by region from 19-33 units per property.[1] The scale of small projects often does not support the transactional costs of traditional multifamily financing and recapitalization products. Some owners have successfully preserved multiple 515 properties as part of portfolio financing transactions, which spread the transactional costs and offers operational efficiencies when the recapitalization is complete. Acquisition financing while a portfolio is assembled, often from multiple owners, and permanent financing can be a challenge. The Enterprises already offer bridge to resyndication products that allow preservation purchasers to acquire a property in need of preservation with bridge financing that provides time to assemble a longer term financing plan, often including low income housing tax credits. Adapting these existing products to accommodate Section 515 portfolio transactions and purchasing them on the secondary market would be a meaningful tool for preservation of 515 properties.

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[1] RURAL RENTAL HOUSING PRESERVATION AND NONPROFIT CAPACITY TO PURCHASE AND PRESERVE SECTION 515 PROJECTS, by Christopher Holden and Theresa Singleton, Housing Assistance Council (HAC), (2002). Table 5

Many preservation transactions, including categories listed in the statute, include tenant protection vouchers for residents of the property. These vouchers protect the tenants from rent increases, but also allow owners to charge market rents for units. Lenders typically do not recognize voucher rents in underwriting, which can limit loan proceeds. The Enterprises should be encouraged to develop products and underwriting guidance for the loans that they will purchase to address voucher units in preservation transactions.

C. Low Income Housing Tax Credits (RFC 41-44)

We support a limited opportunity for the Enterprises to resume LIHTC investment at a future date. Currently, the demand for LIHTC is healthy in all markets and pricing is stable at viable levels. In this environment, investment by the Enterprises does not serve a critical need and may in fact supplant private investment. But this is very much based on an analysis of today's markets. We believe that the Enterprises could play a valuable role in addressing gaps in the market for tax credit investors at a future date.

We support the creation of a qualitative review process through which FHFA could authorize the Enterprises to resume investment in LIHTC where their presence would create needed demand. The Enterprises are in the best position to identify gaps in investment that they may be able to address. Accordingly, the burden to identify and demonstrate the need and the Enterprise's ability to address it should be placed on the Enterprise.

Given the complexity of financial markets and the diversity of local real estate markets and types of projects, it is difficult to establish a quantitative measure for when there is a need for the Enterprises to resume investment in LIHTC. We encourage FHFA to establish a list of factors that will be considered in determining whether an Enterprise should be able to resume investments, as well as procedure for triggering a review and determination. Considerations should be based on LIHTC equity market conditions and could include change in the ten-year treasury interest rate, pricing against historic averages and needs within individual project types and markets. If FHFA determines that the Enterprise can address a gap in the marketplace, it should establish parameters under which the Enterprise can resume investment, including a volume cap for investment.

We support the award of Duty to Serve credit for investments in properties assisted under the statutorily enumerated preservation programs, as well as for investments in rural areas of persistent poverty.

D. *Regulatory Activities to Further Preservation*

i. Small Multifamily Rental Properties (RFC 46)

We applaud FHFA's thoughtful response to the 2010 comments regarding the need for additional support for small multifamily properties. We support the proposal to make purchase and securitization of loan pools backed by small multifamily loans from non-depository CDFIs and specified conventional lenders eligible for Duty to Serve credit. CDFIs like LISC are more able to undertake complicated underwriting required for small deals and often more willing to lend in underserved markets and to deliver the technical assistance needed to accompany the loan. Since 2010, both HUD and FHFA have taken steps to better meet the financing needs of small properties. FHFA has established a housing goal for the purchase of small multifamily loans. HUD has expanded its Risk Share loan program to small multifamily loans, first to loans from state housing finance agencies (HFAs) and more recently to CDFIs. HUD has also worked with the Federal Financing Bank (FFB) to make FFB funds available to HFAs and CDFIs to address liquidity concerns raised by long term lending. These programs are relatively new, but have a broad reach. We encourage FHFA to monitor the success of all of these activities and to assess the need for continued or additional incentive to facilitate liquidity in this market segment.

ii. *Energy Efficiency Improvements on Multifamily Properties (RFC 51)*

Utility costs are a significant factor in shelter costs for low and moderate-income families. Reducing those costs and providing for long-term energy efficiency helps to preserve the affordability of housing. For this reason, we support the inclusion energy efficiency improvements in affordable housing as a regulatory goal. Eligible activities should include support for special financing products that finance energy efficiency improvements to affordable rental housing on terms that are the same or better than those offered to “green” conventional market properties and underwriting requirements that permit increased recognition of energy savings.

iii. *Choice Neighborhoods and Rental Assistance Demonstration Program*

Choice Neighborhoods and the Rental Assistance Demonstration Program are programs designed to preserve existing public and subsidized housing assets and enacted after HERA was passed. Inclusion of these programs as preservation of affordable housing is consistent with the definition of preservation as it was understood at the time that HERA was passed. Purchase of loans used to preserve, redevelop or construct replacement units under Choice Neighborhoods or RAD should be eligible for Duty to Serve credit. We note that in some cases, Choice Neighborhood or RAD redevelopment plans developed to best meet the long term housing needs of the community include new mixed income buildings that may include higher density and units that are not designated affordable in addition to affordable units. Where these units are part of the development that includes the affordable component, purchase of a loan or other financial support should be eligible for Duty to Serve credit.

4. RURAL HOUSING

Through its Rural LISC program, LISC works with more than 70 community development organizations serving over 1400 counties. In these counties throughout the country we see the need for increased liquidity and lending products that meet the unique challenges of rural communities.

Capacity is a significant challenge for rural communities. There are a limited number of local lenders in rural communities and those that are present may be small institutions with a relatively low volume of complex affordable housing transactions. While larger institutions may offer lending to rural areas, without a physical presence or the incentive of CRA credit, the level of service to rural areas is often inadequate. The Enterprises should be encouraged to increase outreach to local lenders serving rural areas, through trainings and the development of products that make packaging and sale of loans by small banks more viable. The Enterprises should also encourage technical assistance and capacity building to lenders serving rural areas, including regional lenders and CDFIs. To be most effective, this assistance should be delivered in partnership with CDFIs or nonprofit intermediaries with knowledge and experience in rural areas rather than just technical experts without specific rural experience.

A. Defining Rural Area (RFC 70-71)

The Notice provides four possible definitions of Rural Area, including a new definition developed by FHFA drawing on existing data and definitions, and requests comment on which definition best serves Duty to Serve objectives. A well-tailored definition is critical to ensure that FHFA can assess the Enterprises performance in facilitating a secondary market for mortgages to very low, low and moderate-income families. An overly inclusive definition or one that cannot be practically integrated and tracked with Enterprise systems could result in an unclear picture as to the level of service actually provided to rural areas.

While from a borrower and developer perspective we believe that application of the USDA definition would provide consistency and relative ease of use, we also recognize that a census tract based definition will allow for more effective tracking of activity within Enterprise and FHFA systems. For this reason, we generally support the FHFA definition of rural area, which includes: (1) All census tracts outside of an OMB designated MSA, or, (2) a census tract in an MSA, but outside of the MSA's Urbanized Areas (UAs) or Urban Clusters (UCs) as designated by USDA's RUCA Codes 1, 4 and 7. However, we also support the modifications to the second component of the definition proposed by the Housing Assistance Council (HAC) in its comments. HAC recommends modifying the second component to refer to "***a census tract in an MSA, but outside of Urbanized or Suburban tracts as designated by USDA RUCA Codes 1 and 2*1 (*selected suburban tracts)."*** We understand that HAC's proposed modification should reduce the number of suburban areas included in the definition and better target small town areas.

B. High Needs Rural Regions and High Needs Rural Populations (RFC 72, 73, 76, 77, 79)

We appreciate FHFA's recognition of the special challenges of housing in areas of persistent poverty and we support the inclusion of support for income-eligible housing for high-needs rural regions and high needs rural populations as a Regulatory Activity. Rural LISC and its partners are engaged in housing finance activities in areas of persistent poverty throughout the country, including Middle Appalachia, the Lower Mississippi Delta and the colonias. In addition to these areas, we urge FHFA to consider expanding the definition of high needs rural regions to include the Southern Black Belt and the California Central Valley, which are also areas of concentrated persistent poverty.

According to the Economic Research Service, a county is "persistently poor" if 20 percent or more of its population was living in poverty over the last 30 years, as measured by the past three censuses.[2] The ERS reports that there are 353 persistently poor counties across the country, or 11.2 percent of all counties. A 2014 report by RUPRI found that persistent poverty counties are overwhelmingly rural: 86 percent were nonmetropolitan (22 percent were metropolitan, 64 percent were noncore).[3] Additionally, 20 percent of all counties in the South region are considered areas of persistent poverty. An expanded definition of high needs rural area would avoid further excluding a subset of persistently poor rural areas.

[2] http://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/geography-of-poverty.aspx
[3] http://www.rupri.org/Forms/Poverty_MillerWeber_July2014.pdf

Both inside and outside of high needs rural areas, there are high-needs rural populations that have significant housing needs. These populations include migrant workers and permanent annual agriculture workers who may work at different locations as crops come to harvest and travel long distances for affordable housing. As the Enterprises seek to develop products that meet the needs of migrant and agricultural workers we urge them to explore underwriting flexibilities that recognize the need for both homeownership and rental units occupied by migrant workers and that partial year occupancy is typical and should not trigger disproportionate penalties in underwriting.

Thank you for this opportunity to comment on the proposed rule. We hope these comments are helpful to you as you develop the regulations and guidelines for these important new GSE Duty to Serve requirements. Please feel free to contact Andrea Ponsor (aponsor@lisc.org), Housing Policy Director at (202)739-9279 if you would like to discuss our recommendations in greater detail.

Sincerely,

Matt Josephs
Senior Vice President for Policy
Local Initiatives Support Corporation