

March 17, 2016

Mr. Alfred M. Pollard  
General Counsel  
Federal Housing Finance Agency  
400 7<sup>th</sup> Street SW, Eighth Floor  
Washington, DC 20219

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

Dear Mr. Pollard:

The Center for Responsible Lending (CRL)<sup>1</sup> files this comment in response to FHFA's proposed rule addressing the Enterprise Duty to Serve Underserved Market (Duty to Serve). Thank you for the opportunity to submit comments on this important subject.

We thank FHFA for its careful attention to this rulemaking, which goes a long way toward ensuring that borrowers from traditionally underserved and/or excluded communities will have access to the mortgage market. CRL applauds FHFA for its recognition of the importance of the Duty to Serve mandate in the Housing and Economic Recovery Act of 2008 (HERA) and for putting forth a strong proposed rule. We strongly support much of what FHFA is proposing. The comments below address numerous questions on which FHFA requests input, including general process, evaluation, and public review, as well as specific comments on the three market areas.

## **I. Importance of the Duty to Serve Proposed Rule**

As the rule proposal states and as Director Watt has rightfully noted,<sup>2</sup> under HERA, FHFA and the Government Sponsored Enterprises (GSEs or Enterprises) have a duty to ensure that borrowers from traditionally underserved and/or excluded communities will have access to the mortgage market.<sup>3</sup>

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<sup>1</sup> The Center for Responsible Lending (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. Self-Help has provided \$6 billion in financing to 70,000 homebuyers, small businesses, and nonprofits and serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, and Chicago.

<sup>2</sup> Comments *available at*

[http://www.brookings.edu/~media/events/2014/5/13%20future%20fannie%20mae%20freddie%20mac/20140513\\_fhfa\\_watt\\_housing\\_transcript.pdf](http://www.brookings.edu/~media/events/2014/5/13%20future%20fannie%20mae%20freddie%20mac/20140513_fhfa_watt_housing_transcript.pdf).

<sup>3</sup> Housing and Economic Recovery Act of 2008, P. Law 110-289, Section 1229(a)(1).

Duty to Serve Underserved Markets:

(1) Duty—To increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets, each enterprise shall provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages for very low-, low-, and moderate-income families... .

We note that the obligation of the Enterprises to serve the entire market and ensure that underserved borrowers (including those from rural, African-American and Latino communities, prospective first time homeowners, millennials, and low- and moderate-wealth households) have access to responsible forms of mortgage credit is critical.<sup>4</sup> This is particularly important now as today's market offers few opportunities for such borrowers. African-American borrowers received just 2.6% of conventional mortgages in 2014 and Latino borrowers received just 5%.<sup>5</sup> FHFA and the Enterprises also have an explicit duty to broadly increase liquidity in the mortgage market. Not only is this obligation addressed by statute, it is essential to the recovery of the housing market and the US economy. FHFA should continue to invest as much effort as possible to ensuring access to responsible credit for more communities, as many of the groups described above will constitute the majority of the housing market in the near future.<sup>6</sup> Homeownership is an important component of family wealth, particularly for low-income and minority households, and has been shown to explain much of the observed racial wealth gap.<sup>7</sup>

In addition to HERA, a series of federal laws, regulations and executive orders form a strong regulatory framework aimed at ensuring non-discrimination in the housing and mortgage markets. These include the Fair Housing Act,<sup>8</sup> the Equal Credit Opportunity Act,<sup>9</sup> the federal charters of Fannie Mae and Freddie Mac,<sup>10</sup> the Federal Housing Enterprises Financial Safety and Soundness Act (Safety and Soundness Act) and its implementing regulations, and several Executive Orders. Further, where federal funding is involved, whether in the form of loans, insurance or -- as in the case at hand -- guarantees, any federal agency administering such funds has an obligation to take affirmative steps to further fair housing. This framework underscores the priority that Congress has placed upon fair access to housing, including mortgage lending.<sup>11</sup>

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<sup>4</sup> Stated in a coalition letter ("Coalition Letter") to the Senate Banking Committee, *available at* <http://www.responsiblelending.org/mortgage-lending/policy-legislation/2014-Civil-Rights-Groups-Comments-to-Senate-Banking-Comm-on-Housing-Finance-Reform-Bill-Feb-24.pdf>.

<sup>5</sup> CENTER FOR RESPONSIBLE LENDING, MORTGAGE LENDING CONTINUES UNDER DODD-FRANK, *available at* [http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2014hmda\\_data\\_issuebrief\\_f.pdf](http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2014hmda_data_issuebrief_f.pdf).

<sup>6</sup> JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, THE STATE OF THE NATION'S HOUSING 2014, *available at* <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14-color-full.pdf>.

<sup>7</sup> SHAPIRO, T., THE ROOTS OF THE WIDENING RACIAL WEALTH GAP: EXPLAINING THE BLACK WHITE DIVIDE, *available at* <http://iasp.brandeis.edu/pdfs/Author/shapiro-thomas-m/racialwealthgapbrief.pdf> and HERBERT, C ET. AL., IS HOMEOWNERSHIP STILL AN EFFECTIVE MEANS OF BUILDING WEALTH FOR LOW-INCOME AND MINORITY HOUSEHOLDS (WAS IT EVER?) *available at* <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/hbtl-06.pdf>

<sup>8</sup> 42 U.S.C. 3608(d). The Fair Housing Act makes it clear that all federal agencies that have programs or activities that relate to housing and community development have an affirmative obligation to promote fair housing.

<sup>9</sup> 15 U.S.C. Sec. 1691 et seq. Prohibits discrimination in any credit transaction based on, among other things, race, color, religion, national origin, sex or marital status, age (provided the applicant has the capacity to contract).

<sup>10</sup> See Sec. 301(n)(2)(G) of the Fannie Mae charter and Sec. 307((f)(2)(G) of the Freddie Mac charter. According to their charters, the Enterprises are also required to "assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures, that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending."

<sup>11</sup> See Coalition Letter, *supra* note 2.

Communities in underserved markets have been deeply harmed by irresponsible lending in the last decade. Today, rather than remediate the damage done by subprime lending and its disproportionate impact on communities of color, lenders' overcorrections in the market have instead closed off lending options for these communities. One reason the conventional market is struggling to serve communities of color and low to moderate-income families is that credit is more constrained now than it has been in a generation. Since the financial crisis, many lenders and the Enterprises have limited lending and increased prices for borrowers with lower credit scores and/or lower down payments. Borrowers of color, low and moderate-income families, and first time homebuyers tend to have both lower FICO scores and fewer resources to put towards a down payment due, in part, to discrimination. Historically, federal housing policies provided credit access to whites and wealthier Americans while excluding others, preventing generational wealth building. More recently, predatory loan products were targeted to these communities<sup>12</sup> stripping wealth<sup>13</sup> and depressing credit scores.<sup>14</sup> As a result, eligibility limits and pricing based on FICO scores and Loan-to-Value ("LTV") ratios serve as barriers to homeownership for these borrowers.

Evidence of this can be seen in the increase in the median credit score for all new purchase originations to 754, rising 46 points in the last decade.<sup>15</sup> Furthermore, less than 10% of loans were made to borrowers with FICO scores at 668, even though about a third of the population has a credit score in this range.<sup>16</sup> The Urban Institute calculated that, as result of tight restrictions based on credit score, 5.2 million fewer loans were made between 2009 and 2014 than would have been expected based on historically safe lending standards.<sup>17</sup> While we note and fully support that the Enterprises have since reinstated lower down payment programs and additional pilots to address these issues, we believe a strong duty to serve rule will further access to credit initiatives by promoting and incentivizing responsible and sustainable lending to lower wealth households.

## II. Duty to Serve Process

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<sup>12</sup> CRL's report LOST GROUND, 2011: DISPARITIES IN MORTGAGE LENDING AND FORECLOSURES (*available at*: <http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-2011.pdf>) found that "African Americans and Latinos were consistently more likely to receive high-risk loan products, even after accounting for income and credit status."

<sup>13</sup> CRL's report 2013 UPDATE: THE SPILLOVER EFFECTS OF FORECLOSURES (*available at*: <http://www.responsiblelending.org/mortgage-lending/research-analysis/2013-crl-research-update-foreclosure-spillover-effects-final-aug-19-docx.pdf>) found that "Minority neighborhoods have lost or will lose \$1.1 trillion in home equity as a result of spillover from homes that have started the foreclosure process."

<sup>14</sup> BREVOORT, K. AND COOPER, C., FORECLOSURE'S WAKE: THE CREDIT EXPERIENCES OF INDIVIDUALS FOLLOWING FORECLOSURE *available at*: <http://www.federalreserve.gov/pubs/feds/2010/201059/index.html>.

<sup>15</sup> URBAN INSTITUTE, HOUSING FINANCE AT A GLANCE: A MONTHLY CHART BOOK FEBRUARY 2016 AT 14, *available at* <http://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-february-2016>.

<sup>16</sup> ID., JIM PARROTT AND MARK ZANDI, OPENING THE CREDIT BOX, *available at* <http://www.urban.org/publications/412910.html>.

<sup>17</sup> LAURIE GOODMAN ET. AL. TIGHT CREDIT STANDARDS PREVENTED 5.2 MILLION MORTGAGES BETWEEN 2009 AND 2014, *available at* <http://www.urban.org/urban-wire/tight-credit-standards-prevented-52-million-mortgages-between-2009-and-2014>.

CRL supports FHFA's approach to holding the Enterprises accountable for their Duty to Serve the particular markets enumerated in HERA. The proposed rule provides a clear and useful process for the Enterprises to describe their approach and activities in addressing their Duty to Serve obligation. CRL supports the proposed structure for these plans and the process by which they will be evaluated as laid out in the proposed rule.

To better hold the Enterprises accountable, we suggest two areas where more public input should be incorporated into the process. Additionally, we strongly recommend that the Duty to Serve mandate in HERA focus on pushing the Enterprises to undertake activities in excess of their current activities. The evaluation and enforcement of the Duty to Serve plans should be used in that spirit to expand access in these underserved markets.

*A. CRL Supports FHFA's General Approach for the Underserved Market Plans.*

The Underserved Market Plans called for in the proposed rule provide a clear and measurable standard that allows FHFA and the public to evaluate the Enterprises' activities and performance in meeting their obligations to serve these markets. The structure of the plans described in the proposed rule provides a clear and useful mechanism for assessing this activity (Q7). In particular, we support the requirement that the Enterprises address each area, even if they are not proposing activities in each area. Further, we support the way that FHFA has allowed the Enterprises to propose activities beyond the core and regulatory activities spelled out in the rule. This structure gives appropriate discretion and flexibility to the Enterprises but also maintains accountability for the activities spelled out in the law and allows FHFA to appropriately guide the activities (Q1, Q2).

*B. FHFA Should Make Additional Parts of the Process Subject to Public Review.*

The plans and the process for reviewing these plans should have a public review component. For the most part, the proposed rule effectively incorporates public comments. However, the rule does not stipulate a public review process for any revisions to the plan. We believe this should be incorporated into the final rule. While minor revisions would not need public review, meaningful changes to the plan should be subject to a public comment period. We recommend FHFA add a requirement that revisions to Objectives be subject to a 30 day public comment process before being approved by FHFA. We also agree with the suggestions proposed by the Center for American Progress (CAP) and Consumer Federation of America (CFA), that FHFA provide notice when significant modifications are approved, detailing the approved changes and reasoning behind FHFA's approval.<sup>18</sup> We also suggest that the final rule clarify that the public comments will be used by the Enterprises in the development of the Underserved Market Plans and by FHFA in their review of the Enterprises' plans (Q9).

The public should have a role in holding the Enterprises accountable to their plans in addition to being involved in the process of developing the plans. The final rule should make clear that the reports required of the Enterprises (quarterly, semi-annual and annual) will be made public. We

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<sup>18</sup> CRL concurs with and cites to the comment submitted to FHFA on this proposal by the Center for American Progress (CAP) and Consumer Federation of America (CFA).

recommend these reports be posted on the Enterprise and FHFA websites at the same place where the Underserved Market Plans are posted (§1282.66). We also agree with the concerns raised by Americans for Financial Reform (AFR) that the proposed timeline for developing and reporting will make it difficult for public commenters to adequately incorporate information about the Enterprises' activities and progress. We agree with AFR's suggestion that the final rule expressly invite supplemental public input based on the Enterprises Semi-Annual Report (§1282.32(d)(2)), which includes information regarding performance on all assessment Factors or requiring the Enterprises to report on all of the activities and objectives quarterly in the final year of a three-year plan (§1282.66).<sup>19</sup>

*C. CRL Urges FHFA to Ensure Honest and Accurate Evaluation of the Enterprises' Underserved Markets Plans.*

The structure set forth in the proposed rule to develop and evaluate Underserved Market Plans provides a mechanism that FHFA can and should use to push the Enterprises to do more than they would do to serve these markets absent the requirement. HERA includes this requirement precisely because the Enterprises historically have failed to serve these markets. To effectively hold them accountable, the Underserved Market Plans and progress under such plans must be honestly evaluated.

FHFA's proposed evaluation guide is rightly both tailored to the activities the Enterprises commit to in their plans and public (Q80). The creation of four tiers of scores provides a helpful level of nuance to understand how the Enterprises are meeting their obligation (Q81).<sup>20</sup> The proposed evaluation guide and numeric rating of each assessment factor provide transparency in FHFA's process of evaluating the Enterprises as well as useful metrics about the Enterprises' progress and activities. We urge FHFA to clarify in the final rule that it will make the evaluation guides, annual ratings and scores for each assessment factor publically available. We agree with the concerns raised by other commenters that the proposed process of rolling up scores evenly weights activities that may not have equal impact.<sup>21</sup> We suggest that FHFA consider alternative ways of rolling up the numeric assessment factor scores into an overall rating to avoid such an outcome and to detail how the weighting will be done in the evaluation guides. FHFA also should set the ranges that correspond to each rating such that the rating provides an accurate reflection of each Enterprises effort and outcome. For example, the ranges should not be so broad that the Enterprises can pass without putting forth extra effort. There is a risk that this process could create a system where Duty to Serve credit gets provided for work that is already being done. The purpose of this rule in part is to *increase* reaching underserved markets and the evaluation should be done to that end. Finally, if an Enterprise receives a "Failed" rating, FHFA should use all means at its disposal to penalize and correct noncompliance.

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<sup>19</sup> CRL concurs with and cites to the comment submitted to FHFA on this proposal by the Americans for Financial Reform (AFR).

<sup>20</sup> CRL would also support expanding the number of rating categories as proposed by CAP and CFA.

<sup>21</sup> The comment provided jointly by CAP and CFA as well as the comment provided by Enterprise also highlight this concern.

### III. Affordable Housing Preservation Market

CRL supports FHFA’s comprehensive consideration of the Enterprises’ duty to serve the affordable housing preservation market. Our comments below address new construction, neighborhood preservation, and shared equity homeownership programs.

*A. The Term “Preservation” Should be Interpreted to Include New Construction of Affordable Housing, but Should be Limited to Enterprise Proposals That Encourage Residential Economic Diversity or Provide Financing for Replacement Housing that Preserves the Subsidy on Existing Affordable Units in Areas of Opportunity.*

FHFA specifically requests comments on whether the term “preservation” should be interpreted to allow Duty to Serve credit for new construction as well as for refinancing mortgages on existing rental properties (Q29). We would support Duty to Serve credit for new construction if and only if an Enterprise submits a strong proposal to FHFA for financing new, affordable units in a way that encourages residential economic diversity or that provides financing for replacement housing that preserves the subsidy on existing affordable units in areas of opportunity. FHFA should consider allowing credit for Enterprise support for small community lenders and CDFIs that operate in this space through acquisition and development financing as well as forward commitments for long-term loans for newly constructed homes. Such support could include purchase or securitization of such end loans; providing working and equity-like capital to facilitate such lending; and collaborations that could be detailed in the Enterprises’ plans.<sup>22</sup>

At this time there does not appear to be a need for additional liquidity in the multifamily new construction market – banks and insurance companies appear to be meeting the demand for take-out loans and permanent financing on new buildings. Moreover, the GSEs have limited experience in the financing of new multifamily construction, which may mean that it could be difficult for them to do this work efficiently. However, if an Enterprise has a strong proposal for new construction with the conditions discussed, then FHFA should consider it.<sup>23</sup>

*B. The Enterprises Should Support Shared Equity Homeownership Programs.*

We are pleased to see FHFA emphasize the importance of shared equity homeownership programs. Shared equity is a powerful method to ensure housing affordability over the long-term. We believe that the Enterprises should support shared equity models through loan purchases – both first liens and potentially the second liens provided by third parties – by streamlining and standardizing their underwriting for shared equity models and by making targeted investments that help nonprofits support shared equity models or that train lenders in the financing of shared equity.<sup>24</sup>

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<sup>22</sup> CAP and CFA comment to FHFA on this proposal, *supra* note 18.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

#### **IV. Rural Housing Market**

We support FHFA's increased attention to serving rural housing needs. As FHFA notes in the proposed rule, rural communities have more limited access to mortgage credit than urban areas. Our definition-focused comments below are meant to highlight that FHFA must ensure that the Enterprises' activities address the rural areas they are intended to serve. We note that the comment letter from the Housing Assistance Council (HAC) provides a more technical explanation of these concerns as well as possible solutions. CRL supports HAC's comment letter on these issues.

##### *A. The Proposed Rule's Rural Definition Includes Suburban Areas and Omits Some Rural Areas.*

CRL recognizes the operational challenges inherent in choosing an appropriate rural definition. We agree with the census tract measure in this context. However, as it currently stands, the proposed rule's rural definition includes too much suburban territory. We caution FHFA to avoid awarding Duty to Serve credit for housing in suburban communities that may be cast as rural under the proposed rule's definition. On the other end of the spectrum, the proposed rule's rural definition omits rural territory, such as small towns, that are subsumed into urban clusters. FHFA should closely monitor the rural locations where Duty to Serve credit is given and assess whether the activities are truly serving rural markets.

##### *B. FHFA Should Award Duty to Serve Credit for Housing in Rural Counties With Persistent Poverty.*

We commend FHFA for concentrating its efforts on high-needs rural regions and high-needs rural populations. With respect to high-needs rural areas, however, we note that some high-needs rural areas are not captured in the proposed rule's definition (*e.g.*, the Southern Black Belt/Rural Southeast). For this reason, we suggest that FHFA consider persistent poverty rural counties (defined as counties with 20% or higher poverty in the last three decennial censuses) to be eligible for Duty to Serve credit (Q77).

#### **V. Manufactured Housing**

The manufactured housing market is important in the affordable housing discussion both in rural markets and nationally. CRL agrees that the Enterprises should continue to explore more opportunities to increase access to credit in the manufactured housing market.

##### *A. FHFA Should Collect More Data to Better Serve the Manufactured Housing Market.*

The proposal correctly notes that the Enterprises lack the appropriate data on manufactured housing lending. Manufactured housing data varies considerably from state to state, and data as basic as the number of communities, lot rents, home age and community size are either missing or only partially collected by the states, industry, Census or other sources. Without an adequate amount of data, it will be difficult for the Enterprises to determine what best strategies will be necessary to meet access to credit and safety and soundness needs. Given their national scope,

the Enterprises are well positioned to collect and make public better manufactured housing data, and we urge FHFA to do so.<sup>25</sup>

*B. CRL Supports FHFA's Proposal to Incentivize Real Property Titling. We Also Encourage FHFA to Support a Safer Chattel Financing Market.*

CRL approves of FHFA's support for manufactured housing titled as real property (Q10). The Enterprises must tailor their products to ensure that the manufactured home mortgage market is supported and that manufactured home buyers have the financing tools to purchase, site and install a new manufactured home. We agree with the proposed rule that real property titling is favorable over personal property titling, particularly with respect to consumer protections. We support that FHFA explicitly encourages the Enterprises to leverage their market presence to help shift financing toward mortgage products from chattel loans, and for singling out the Uniform Manufactured Housing Act developed by the National Conference of Commissioners on Uniform State Laws.<sup>26</sup>

While CRL supports incentives to promote real property titling, we also support FHFA's proposal on chattel financing by developing a pilot (Q13). We believe that FHFA should require the chattel loans in such a pilot to have rigorous underwriting and consumer protection standards that result in loans that are both safe and sound for Enterprise investment and appropriate for homeowners. Specifically, the loans should meet the Qualified Mortgage standard with respect to loan terms and features, and be underwritten within the borrower's ability to repay the loan, as well as the current lot rent, if applicable. FHFA should also, after detailed analysis, designate an APOR rate cap on chattel loans included in the pilot program.<sup>27</sup>

The pilot should have the explicit goal of expanding or making permanent a program to support safe chattel lending. Despite our preference for real estate loans to personal property loans, we are aware of the place chattel loans have in the market. As FHFA references, there are potential operational and regulatory "protection and disclosure" difficulties associated with introducing a chattel pilot, and we acknowledge that these are very legitimate concerns. These issues are one of the reasons we actively support conversion to real estate. With this said, the potential dangers faced by residents of land lease communities are of a much greater concern than the implementation challenges that come with putting together a chattel pilot. We also support the availability of strong homebuyer education programs for borrowers taking part in the pilot, as well as for those eligible for manufactured home loans.<sup>28</sup>

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<sup>25</sup> CRL concurs with and cites to the comment submitted to FHFA on this proposal by the Corporation for Enterprise Development (CFED).

<sup>26</sup> *Id.* Like CFED, CRL encourages the Enterprises to actively support titling reform that will increase the percentage of manufactured housing loans titled as real rather than personal property.

<sup>27</sup> CAP and CFA comment to FHFA on this proposal, *supra* note 18.

<sup>28</sup> CFED comment to FHFA on this proposal, *supra* note 25.



*C. CRL Urges FHFA to Reconsider its Proposal to Offer Blanket Loans Based Upon Size of the Manufactured Housing Community.*

One major concern we have with the manufactured housing piece of the proposed rule is offering credit for blanket loans on communities with fewer than 150 pads (Q17). We agree with the assessment offered in CFED's comment letter that communities smaller than 150 units are not necessarily underserved or disadvantaged by virtue of their size alone, nor do communities smaller than 150 units provide meaningful protections for residents by virtue of their size alone.<sup>29</sup>

Instead of measuring the metric by size, FHFA should consider an approach that uses poverty and geography-based metrics and the like to isolate the truly underserved or disadvantaged manufactured housing communities. It is reasonable to assume that smaller manufactured housing communities face greater challenges in attracting capital than their larger counterparts, but we do not believe that this in of itself justifies access to duty-to-serve credit. The Enterprises are already funding deals on manufactured housing communities smaller than 150 pads, so size is not a disqualifying factor. We think that location may be a bigger predictor of need than size. Well-performing communities in high-demand areas will often secure funding (or reuse) while manufactured housing communities in less competitive markets – regardless of size – are in greater need of Enterprise support. Instead of offering credit on blanket loans to manufactured housing communities with fewer than 150 pads, FHFA should consider the process proposed in the rural portion of the proposed rule, or consider high-cost areas where manufactured housing community preservation would secure affordable housing for years to come.<sup>30</sup>

## **VI. Residential Economic Diversity**

CRL urges the FHFA to consider both incentives to promote economic diversity and to revitalize neighborhoods in high poverty areas.

*A. We Urge FHFA to Strike a Balance Between Creating Both Economic and Racial Diversity Without Missing Opportunities to Promote Neighborhood Stabilization.*

First, we support the concept that GSEs' activities should promote residential economic diversity and support this being included in the proposal. Giving lower-income families the chance to raise their children in high opportunity areas benefits not only those families, but society as a whole.<sup>31</sup>

While we support FHFA's proposal to include residential economic diversity in the proposed rule, we believe that focusing on economic diversity alone is not sufficient. Despite recent progress, our communities remain highly segregated by race and ethnicity and this segregation undermines the economic viability and social fabric of our country. It is important – and FHFA

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> CRL concurs with and cites to the comment submitted to FHFA on this proposal by the National Fair Housing Alliance (NFHA). See also the research conducted by Raj Chetty and others, available at <http://www.equality-of-opportunity.org/index.php/component/content/article?id=98>.

has a statutory mandate – to tackle this type of segregation, as well.<sup>32</sup> Efforts that promote greater economic diversity will not necessarily address this problem, because the persistence of housing discrimination means that people of color and others protected under our fair housing laws may not benefit from these efforts.

We urge FHFA to assess the GSEs’ activities that promote residential economic diversity to ensure that they also promote residential racial and ethnic diversity, and to provide credit only for those activities that promote both income and racial diversity. We also recommend that FHFA make this a mandatory requirement, fully incorporating this diversity analysis into the scoring system under the regulation, rather than simply using it for extra credit.

*B. In Addition to Racial and Economic Diversity Initiatives, FHFA Should Also Direct Efforts to Revitalize High Poverty Neighborhoods.*

To accomplish reaching underserved markets in various areas, we must both expand the supply of affordable housing in high opportunity areas and provide disinvested communities with the housing and amenities they have been denied. We also support the proposal to give the GSEs credit for supporting neighborhood stabilization programs, which are vital to healing the devastating effects of the foreclosure crisis on communities of color. As stated in Section I of this comment, these communities were targeted for unsustainable subprime mortgages and have borne the brunt of the crisis.

The Safety and Soundness Act “provides that the Enterprises shall facilitate a secondary market for ‘comparable state and local affordable housing programs.’”<sup>33</sup> FHFA asks whether local neighborhood stabilization programs are an example of such a program (Q40). As stated in the proposal, these programs “enable communities to address problems related to mortgage foreclosure and abandonment through the purchase and redevelopment of foreclosed or abandoned homes for very low, low or moderate income households.” However, some of the properties made available to such programs are in poor condition, and require so much repair work that it is uneconomic to return them to active use. The only viable option is to demolish these homes, which is also expensive. To increase the likelihood that such programs will be successful, we must prevent foreclosed homes from being allowed to deteriorate. We urge FHFA to be more aggressive in overseeing the GSEs’ management of their foreclosed properties, and to ensure that they have in place effective policies and practices to preserve foreclosed properties in the best possible condition.<sup>34</sup>

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<sup>32</sup> Cited statutes, *supra* notes 3, 8-10.

<sup>33</sup> The Federal Housing Enterprises Financial Safety and Soundness Act, 12 U.S.C. 4565(a)(1)(B)(ix), cited in the proposal.

<sup>34</sup> NFHA Comment to FHFA on the proposal, *supra* note 31.

*C. FHFA Should Ensure That Property Disposition and Neighborhood Stabilization Programs Align With the Intent of Duty to Serve.*

Neighborhood stabilization, along with racial and economic integration are more than appropriate objectives for the Enterprises, but this must be done in a way that does not inadvertently harm lower wealth households and communities of color.

We urge FHFA to engage in REO disposition methods that will both reduce neighborhood blight and result in the growth of owner occupied households. Both Enterprises are currently disposing of large numbers of REO properties and non-performing loans as part of their charge under the Conservatorship to reduce their portfolios. Given that the disposition of the GSEs portfolios means that the Enterprises lose significant control over what happens after the disposition, this activity has the potential to either support or undermine the objectives of the Duty to Serve rule. For instance, large investors may turn a property into an expensive rental, or in some cases, do nothing at all for a period of time. Instead of selling lower-valued, distressed, or vacant properties in large auction pools, we suggest that the Enterprises receive Duty to Serve credit for arranging to transfer these notes to an appropriate end user that will contribute to the intent of the proposed rule. This may include auctions of small pools aimed at nonprofits (which both Enterprises are already doing) or direct sales/donations of very low-value notes to nonprofits or other entities that have demonstrated a commitment to neighborhood stabilization and sustainable homeownership (municipalities, land banks, or others in the affordable housing industry). It is important to ensure that homeowners, neighborhoods, and municipalities are not left worse off by the Enterprise's decision to sell loans. That means that note buyers should offer the same loss mitigation suites offered by Enterprise servicers, should have the same foreclosure timelines as Enterprise servicers, and should have the same prohibitions on lien release and walkaways as Enterprise servicers.

In addition, we urge FHFA to allow the Enterprises to receive Duty to Serve credit for purchasing loans made to homebuyers in neighborhoods requiring stabilization, much as FHFA has recommended they receive for purchasing loans on small multifamily properties. We also recommend Duty to Serve credit for programs that help borrowers in these places, especially creditworthy borrowers from lower wealth households and borrowers of color. For example, credit should be provided for programs that provide housing counseling from an accredited counseling organization, or community focused programs that rehab and resell (at reasonable prices) vacant single family properties. Providing significantly increased access to low or market rate funding for nonprofit affordable housing developers will encourage scalable operations, which in turn would enable those developers to access trades or materials with negotiated terms and/or payments that would lower their total development cost.<sup>35</sup>

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<sup>35</sup> CRL concurs with and cites to the comment submitted to FHFA on this proposal by the Center for Community Progress and National Community Stabilization Trust (NCST).

Overall, CRL urges FHFA to consider how additional credit activities such as those outlined in the rule proposal could be incorporated into one of the core mandatory regulatory activities as to increase opportunities for these programs to proceed.

## **VII. Conclusion**

Thank you for consideration of our comments. We hope FHFA will take full advantage of this opportunity to make the Duty to Serve rule as robust and effective as possible. We would be happy to discuss our comments further.