BILLING CODE 8070-01-P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590-AB22

Enterprise Duty to Serve Underserved Markets Amendments

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA or Agency) is proposing to amend its Enterprise Duty to Serve Underserved Markets regulation to add a definition of "colonia census tract," which would serve as a census tract-based proxy for a "colonia," and to amend the definition of "high-needs rural region" in the regulation by substituting "colonia census tract" for "colonia." The proposed rule would also revise the definition of "rural area" in the regulation to include all colonia census tracts regardless of their location. These changes would make activities by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) in all colonia census tracts eligible for Duty to Serve credit. The intent of the changes is to facilitate the Enterprises' ability to operationalize their Duty to Serve activities and thereby help increase liquidity in these underserved communities.

DATES: FHFA will accept written comments on the proposed rule on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590-AB22, by any one of the following methods:

- *Agency website: www.fhfa.gov/open-for-comment-or-input*.
- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590-AB22.
- *Hand Delivered/Courier*: The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590-AB22, Federal Housing Finance Agency, 400 Seventh Street, SW, Washington, DC 20219. Deliver the package at the Seventh Street, SW entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service*: The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590-AB22, Federal Housing Finance Agency, 400 Seventh Street, SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For time sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Ted Wartell, Associate Director, Office of Housing and Community Investment, 202-649-3157, ted.wartell@fhfa.gov;

Marcea Barringer, Supervisory Policy Analyst, Office of Housing and Community Investment, 202-649-3275, marcea.barringer@fhfa.gov; or Dinah Knight, Assistant General Counsel, Office of General Counsel, (202) 748-7801, dinah.knight@fhfa.gov, Federal Housing Finance Agency, 400 Seventh Street, SW, Washington, DC 20219. These are not toll-free numbers. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Comments and Access

FHFA invites comments on all aspects of the proposed rule, in addition to specific requests for comments provided throughout, and will take all comments into consideration before issuing a final rule. Commenters do not need to answer each question. Copies of all comments will be posted without change and will include any personal information you provide such as your name, address, e-mail address, and telephone number, on the FHFA website at *http://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

II. Background

A. *Statutory Background*

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) provides generally that the Enterprises "have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate income families.[1] Section 1129 of the Housing and Economic Recovery Act of 2008 (HERA)

[1] *See* 12 U.S.C. 4501(7).

amended section 1335 of the Safety and Soundness Act to establish a duty for the Enterprises to serve three specified underserved markets in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for certain categories of borrowers in those markets.[2] Specifically, the Enterprises are required to provide leadership in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families for the manufactured housing, affordable housing preservation, and rural housing markets.[3] In addition, section 1335(d)(1) of the Safety and Soundness Act requires FHFA to establish, by regulation, a method for evaluating and rating the Enterprises' compliance with the Duty to Serve underserved markets.[4]

B. *Duty to Serve Regulation and Policy Guidance*

FHFA's regulation on the Enterprise Duty to Serve Underserved Markets implements the Duty to Serve statutory requirements in the Safety and Soundness Act.[5] Under the regulation, each Enterprise is required to prepare an Underserved Markets Plan (Plan) describing the specific activities and objectives it will undertake to fulfill its Duty to Serve in each underserved market over a three-year period.[6] The regulation identifies specific types of activities that are eligible to receive Duty to Serve credit and that an Enterprise may include in its Plan.[7] The regulation also provides a general framework

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[2] *See* 12 U.S.C. 4565.
[3] *See* 12 U.S.C. 4565(a). The terms "very low-income," "low-income," and "moderate-income" are defined in 12 U.S.C. 4502.
[4] *See* 12 U.S.C. 4565(d)(1).
[5] *See* 12 CFR part 1282, Subpart C; 81 FR 96242 (Dec. 29, 2016).
[6] *See* 12 CFR 1282.32(a), (b).
[7] *See* 12 CFR 1282.33(c) for eligible activities in the manufactured housing market; 12 CFR 1282.34(c), (d) for eligible activities in the affordable housing preservation market; and 12 CFR 1282.35(c) for eligible

for FHFA to annually evaluate and rate the Enterprises' compliance with their Duty to Serve.[8]

In addition to the regulation, FHFA has released, and periodically updates, guidance addressing implementation and operational issues the Enterprises have encountered while developing and executing their Plans, referred to as the Evaluation Guidance.[9] The Evaluation Guidance describes: the procedures for preparing the Plans; the standards for FHFA issuance of Non-Objections to the Plans; and the process by which and standards for FHFA's annual evaluation of each Enterprise's compliance with its Plan and FHFA's rating of the extent of such compliance and its impact on each underserved market.[10]

Under the regulation, activities eligible for Duty to Serve credit and for inclusion in the Plans for each underserved market are grouped into three categories—Statutory Activities (which are specified in the Safety and Soundness Act), Regulatory Activities (which are specified in the regulation), and Additional Activities (which are proposed by an Enterprise and subject to FHFA determination of whether they are eligible to receive Duty to Serve credit). While no single Statutory or Regulatory Activity is mandatory, an Enterprise is required to consider a minimum number of Statutory or Regulatory Activities for each underserved market, as designated by FHFA in the Evaluation Guidance.[11]

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activities in the rural housing market. An Enterprise may include in its Plan other activities (referred to as "Additional Activities") to serve eligible households, subject to FHFA determination of whether the Additional Activities are eligible to receive Duty to Serve credit.

[8] *See* 12 CFR 1282.36.

[9] *See* 12 CFR 1282.36(d).

[10] The current Duty to Serve Evaluation Guidance is available at: https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/Evaluation-Guidance_2022-5.pdf.

[11] *See* 12 CFR 1282.32(d)(1).

C. *The Rural Housing Market Under the Duty to Serve Regulation*

Under the regulation, activities eligible for Duty to Serve credit for the rural housing market must be in a "rural area." Section 1282.1 of the regulation defines "rural area" as: (i) a census tract outside of a metropolitan statistical area (MSA) as designated by the Office of Management and Budget (OMB); or (ii) a census tract in an MSA but outside of the MSA's Urbanized Areas as designated by the U.S. Department of Agriculture's (USDA) Rural-Urban Commuting Area (RUCA) Code #1 and outside of tracts with a housing density of more than 64 housing units per square mile in USDA's RUCA Code #2.

The regulation identifies certain regions within rural areas that have particularly acute financing needs for affordable housing for low-income households as "high-needs rural regions," and designates Enterprise support for these high-needs rural regions as a Regulatory Activity.[12] Specifically, § 1282.1(b) of the regulation defines a "high-needs rural region" as any of the following regions located in a rural area: (i) Middle Appalachia; (ii) the Lower Mississippi Delta; (iii) a colonia; or (iv) a tract located in a persistent poverty county and not included in Middle Appalachia, the Lower Mississippi Delta, or a colonia. FHFA stated in the preamble to its 2016 Duty to Serve final rule that it selected the rural regions identified in the definition because they are characterized by a high concentration of poverty and substandard housing conditions.[13] The preamble also acknowledged comments received on FHFA's 2015 Duty to Serve proposed rule from policy advocacy organizations, nonprofit organizations, government entities, and a trade association supporting the inclusion of the proposed high-needs rural regions as a

[12] *See* 12 CFR 1282.35(c).
[13] 81 FR 96242, 96274 (Dec. 29, 2016).

Regulatory Activity, stating that there are extensive challenges to serving these regions and populations, and that these regions and populations have historically lacked necessary investment.[14] Additionally, the preamble referred to discussions with both Enterprises highlighting that certain regions and populations, such as colonias, were unique and would likely take significant time and resources in order to make meaningful improvement in housing conditions in such communities.[15]

FHFA originally proposed a definition of "colonia" in its 2015 Duty to Serve proposed rule that would have included a requirement that the community be located in a U.S. census tract with some portion of the tract within 150 miles of the U.S.-Mexico border.[16] After analysis of existing federal, state, and local definitions of "colonia" and in response to commenters' concerns that the proposed definition was too narrow in scope, FHFA adopted a broader definition of "colonia" in the 2016 final rule with the intent to encourage Enterprise support for colonias.[17] Accordingly, § 1282.1 of the regulation defines a "colonia" as an identifiable community that meets the definition of a colonia under a federal, State, tribal, or local program. However, FHFA noted in the preamble to the 2016 final rule that this broader definition of "colonia" could present challenges for the Enterprises in their efforts to target colonias.[18] The preamble specifically noted that by adopting the broader definition of "colonia," the Agency would be unable, at the time the final rule was issued, to provide the Enterprises with a data file

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14 *Id.*

15 *Id.* Families in colonias have been found to lack safe, sanitary, and sound housing and basic services such as potable water, adequate sewage systems, drainage, utilities, and paved roads." *See* https://www.tdhca.state.tx.us/oci/background.htm.

16 80 FR 79181, 79216 (Dec. 18, 2015).

17 81 FR 96242, 96276 (Dec. 29, 2016).

18 *Id.*

listing all of the census tracts containing colonias eligible for Duty to Serve credit, as it planned to do for the other high-needs rural regions.[19] In an effort to address the data challenges associated with specifically identifying the census tracts that contain a colonia, the preamble encouraged the Enterprises to collect and share granular data with researchers, lenders, and housing providers.[20]

D. *Challenges Associated with Targeting Colonias*

As previously noted, each Enterprise is required to develop and implement a three-year Plan describing the specific activities and objectives it plans to undertake to fulfill its Duty to Serve in each underserved market. Under their 2018-2021 Plans,[21] both Enterprises engaged in activities designed to increase access to mortgage credit by households residing in high-needs rural regions, including colonias. Despite these efforts, the Enterprises have had little success acquiring loans originated in colonias. To date, Enterprise purchases of single-family and multifamily loans originated in colonias that received Duty to Serve credit are low relative to their loan purchases from other high-needs rural regions that received Duty to Serve credit. Figure 1 below shows that the Enterprises reported purchasing 123 single-family loans originated in colonias during the period 2018 through 2021 that received Duty to Serve credit. During the same period, the Enterprises reported purchasing 62,011 single-family loans originated in rural tracts in Middle Appalachia, 41,174 single-family loans originated in rural tracts in the Lower Mississippi Delta, and 28,752 single-family loans originated in persistent poverty counties not already included in one of the other high-needs rural regions that received

[19] *Id.*
[20] *Id.*
[21] Due to the coronavirus pandemic, the initial three-year Plan cycle was extended by one year, on an exception basis.

Duty to Serve credit.

Figure 1: Enterprise Single-Family Loan Purchases in High-Needs Rural Regions

High-Needs Rural Region[22]	Enterprise Single-Family Loan Purchases in High-Needs Rural Regions that Received Duty to Serve Credit				
	2018	**2019**	**2020**	**2021**	**Total, 2018-2021**
Rural Tract in Middle Appalachia	9,471	10,280	18,339	23,921	62,011
Rural Tract in Lower Mississippi Delta	6,783	6,794	11,887	15,710	41,174
Colonia	24	26	29	44	123
Persistent Poverty County Only[23]	4,624	4,842	8,044	11,242	28,752

Source: FHFA Analysis of Enterprise Data

Figure 2 below shows that the Enterprises reported no purchases of multifamily loans originated in colonias that received Duty to Serve credit during the period 2018 through 2021. Figure 2 also shows that the Enterprises reported purchasing 43 multifamily loans originated in rural tracts in Middle Appalachia, 65 multifamily loans originated in rural tracts in the Lower Mississippi Delta, and 91 multifamily loans originated in persistent poverty counties not already included in one of the other high-needs rural regions that received Duty to Serve credit.

[22] The information presented in Figure 1 regarding single-family loan purchases does not take into account the differences in the geographic size or population of the high-needs rural regions.

[23] Colonias and rural tracts in Middle Appalachia and the Lower Mississippi Delta may also be located in persistent poverty counties. If a single-family loan purchase is in a persistent poverty county *and* another high-needs rural region, it is counted under the other high-needs rural region. Single-family loan purchases counted under a persistent poverty county only are those not located in any of the other high-needs rural regions.

Figure 2: Enterprise Multifamily Loan Purchases in High-Needs Rural Regions

High-Needs Rural Region[24]	Enterprise Multifamily Loan Purchases in High-Needs Rural Regions that Received Duty to Serve Credit				
	2018	**2019**	**2020**	**2021**	**Total, 2018-2021**
Rural Tract in Middle Appalachia	7	10	14	12	43
Rural Tract in Lower Mississippi Delta	8	22	23	11	64
Colonia	0	0	0	0	0
Persistent Poverty County Only[25]	9	29	17	36	91

Source: FHFA Analysis of Enterprise Data

FHFA has identified two main challenges that have hindered the Enterprises' Duty to Serve activities in colonias. The first challenge is an operational one that prevents the Enterprises from easily identifying and verifying Duty to Serve-eligible loan purchases and outreach activities in colonias. The second challenge is related to the ability of the Duty to Serve program to effectively target households in colonias due to their under-inclusion in the Duty to Serve regulation's current "rural area" definition. As a result, the number of single-family and multifamily loan purchases in colonias that received Duty to Serve credit has been limited or non-existent to date, as indicated in Figures 1 and 2 above. These challenges and proposed amendments to the Duty to Serve regulation to address them are further discussed below.

1. Operational Challenges with Verifying Duty to Serve-Eligible Activities in Colonias

As noted above, the identification of a colonia under the Duty to Serve regulation

[24] The information presented in Figure 2 regarding multifamily loan purchases does not take into account the differences in the geographic size or population of the high-needs rural regions.

[25] Colonias and rural tracts in Middle Appalachia and the Lower Mississippi Delta may also be located in persistent poverty counties. If a multifamily loan purchase is in a persistent poverty county *and* another high-needs rural region, it is counted under the other high-needs rural region. Multifamily loan purchases counted under a persistent poverty county only are those not located in any of the other high-needs rural regions.

relies, in the first instance, on the identification of the community as a colonia using federal, State, tribal, or local definitions. These definitions are based on varied criteria and boundaries. Some rely on descriptive terms that may be meaningful only at the local level, such as neighborhood names, and are generally not tied to any standard geographic identifiers used by lenders such as census tracts. There is no specific, uniform definition of colonia that can be easily operationalized at the regional or national level through inclusion in a public database that the Enterprises and lenders could check to determine if a particular loan is located in an eligible colonia. Instead, the Enterprises and lenders must first determine, for each loan, the applicable federal, State, tribal, or local definition of colonia, and then confirm that a particular loan falls within the specified boundary of a colonia that meets the definition. This is a time-consuming process that is labor-intensive and susceptible to user error. In light of these constraints, the Enterprises cannot provide clear guidance to lenders and other providers about where to target Duty to Serve-eligible lending and outreach activities in colonias.

The Enterprises have adopted various approaches that aim to support lending activity and mitigate the operational challenges of verifying Duty to Serve-eligible activities in colonias. For example, Freddie Mac has engaged partners to implement initiatives to improve homebuyer readiness in colonias through homeownership fairs, housing counseling and homebuyer education, and credit-building activities. Freddie Mac has also directed its efforts to purchase single-family loans from colonias to the six counties in Texas that have both the largest number of colonias and the largest colonia populations in order to efficiently deploy and target its resources.[26] This strategy has enabled Freddie Mac to leverage the efforts of the Texas Secretary of State to map colonias identified under Texas state law. However, the strategy is not easily replicated in other parts of the country where colonias that meet the applicable definition have not been mapped.

Fannie Mae took a different approach under its Plan, in response to FHFA's encouragement in the preamble to the 2016 final rule that the Enterprises collect and share granular data with researchers, lenders, and housing providers to address the data challenges associated with specifically identifying the census tracts that contained colonias.[27] Fannie Mae engaged a nonprofit organization with research capacities, the Housing Assistance Council (HAC), to conduct research and analysis in an effort to develop a nation-wide, usable and programmatic methodology that would enable accurate targeting and tracking of loans in these communities.[28] The research culminated in a report by HAC that proposed using census tracts that contain a colonia as the relevant geographic unit for Duty to Serve credit, which would enable mortgage lenders and other financial service providers to more efficiently and effectively serve such communities.[29] The report highlighted the uncertainty that lenders face in targeting colonias that are

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[26] *See* Freddie Mac 2018-2021 Plan, page RH8 (https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/Freddie-Mac-Clean-2018-2021-UMP-Sept2021.pdf), and Freddie Mac 2022-2024 Plan, page RH11 (https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FreddieMac2022-24DTSPlan-April2022.pdf).

[27] 81 FR 96242, 96276 (Dec. 29, 2016).

[28] Fannie Mae 2018-2021 Plan for the Rural Housing Market, page RH23 (https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/Fannie-Mae-2021-Plan-Mod-Clean-Redacted.pdf).

[29] *See* Housing Assistance Council, "Colonias Investment Areas: Working Toward a Better Understanding of Colonia Communities for Mortgage Access and Finance," (November 2020), available at https://www.fanniemae.com/media/37566/display.

eligible for Duty to Serve credit given the lack of a census tract-based definition, as well as the effort and expense associated with verifying that a loan qualifies for Duty to Serve credit. The report concluded that the absence of a widely accepted and standardized definition creates disincentives for the Enterprises to target support for colonias in their Plans.

Proposed Revisions to Regulation to Add Colonia Census Tracts—§ 1282.1(b)

FHFA finds merit in adopting a census tract-based approach that would serve as a proxy for colonias for purposes of identifying and verifying Duty to Serve-eligible activities. Accordingly, the proposed rule would amend § 1281.1(b) of the Duty to Serve regulation by substituting the term "colonia census tract" for the term "colonia" in the definition of "high-needs rural region," and adding a definition of "colonia census tract" to mean a census tract that contains a colonia.

The use of census tracts would greatly enhance the Enterprises' and lenders' ability to identify lending and outreach activities in areas containing colonias that would be eligible for Duty to Serve credit. Census tracts are easily obtained geographic identifiers that are widely used by businesses and governments to classify locations. FHFA publishes and regularly updates on its website a Rural Areas Data file that specifies the census tracts in the other high-needs rural regions where lending and outreach activities are eligible for Duty to Serve credit. To date, colonia census tracts have not been included in the Rural Areas Data file due to the absence of a comprehensive list of census tracts containing colonias, as many of the federal, State, tribal, and local definitions of colonias were not mapped to census tracts. Now that such information is available, FHFA would be able to expand the Rural Areas Data file to include the colonia census tracts. The availability of this information in the Rural Areas Data file would make it easier for the Enterprises and lenders to target outreach and loan purchases in these locations, and to assess the impact of efforts to improve housing conditions in these areas.

A census tract-based approach also would align FHFA's treatment of colonias under the Duty to Serve regulation with other census tract-based standards for Enterprise reporting to FHFA. For example, FHFA collects data at the census tract level to assess compliance with the Duty to Serve and Enterprise Housing Goals. Specifically, census tracts serve as the basis for identifying other geographically-based underserved areas, including low-income areas, and area median income to determine affordability and compliance with Duty to Serve and Enterprise Housing Goals objectives.

Request for Comments

FHFA specifically requests comments on the following questions (please identify the question answered by the number assigned below):

1. What are the advantages and disadvantages, if any, to using colonia census tracts instead of colonias, for purposes of identifying and verifying Duty to Serve-eligible activities?

2. Are there other ways to identify the geographic areas in which the Enterprises should receive Duty to Serve credit for eligible activities addressing colonias? If so, describe the alternative approach(es) and any advantages and disadvantages over the proposed census tract-based methodology.

2. *Challenges Related to Colonias and the "Rural Area" Definition*

Under the Duty to Serve regulation, an Enterprise is eligible to receive Duty to Serve credit for activities supporting colonias if the activities (*e.g.*, loan purchases) are located in a "colonia," as defined in the regulation, and the colonia is located in a "rural area," as defined in the regulation. As noted above, § 1282.1(b) of the regulation currently defines a "rural area" as: (i) a census tract outside of an MSA; or (ii) a census tract in an MSA but outside of the MSA's Urbanized Areas as designated by the USDA RUCA Code #1 and outside of tracts with a housing density of more than 64 housing units per square mile in USDA's RUCA Code #2. The HAC report identified 446 census tracts that contain colonias (based on 2010 census data), with 213 of these census tracts, or less than one-half, meeting the Duty to Serve "rural area" definition. HAC subsequently determined that, based on the 2020 census, 577 census tracts contain colonias, with 260 of these census tracts, or less than one-half, meeting the Duty to Serve "rural area" definition.[30] Specifically, the 260 colonia census tracts would satisfy par. (i) of the "rural area" definition because they are located outside of an MSA, but the remaining 317 colonia census tracts, which are located within an MSA, would not meet the additional qualifying parameters of par. (ii) of the "rural area" definition.

FHFA noted in the preamble to its 2016 Duty to Serve final rule that it rejected several definitions of "colonia" because they were too restrictive and would result in the Enterprises receiving little or no Duty to Serve credit for activities in colonias.[31] As a result of the recent mapping of federal, State, tribal, and local definitions of colonia to census tracts, FHFA has learned that its definition of "rural area" has unintentionally

[30] The sizeable increase in census tracts containing colonias using the 2020 geography, from the initial count of 446 using 2010 geography, reflects the increase in the number of census tracts in the region due to population growth. Housing Assistance Council communication with FHFA (August 15, 2022).
[31] 81 FR 96242, 96275 (Dec. 29, 2016).

excluded a large share of colonia census tracts from eligibility for Duty to Serve credit. FHFA is proposing to revise the definition of "rural area" to include all colonia census tracts (and, therefore, all colonias) to address this oversight. This would enable the Enterprises to receive Duty to Serve credit for purchases of loans located in any colonia census tract, thereby enhancing the ability of the Duty to Serve program to incentivize the Enterprises to support the financing of affordable housing for very low-, low-, and moderate-income households in colonia census tracts.

In the 2015 proposed rule, FHFA had proposed and evaluated various ways to define "rural area." In considering definitions used by other agencies, FHFA noted that there was no single, universally accepted definition of "rural area" because the varying definitions were intended to achieve different policy objectives.[32] FHFA explained in the preamble to the 2016 final rule that its ultimate selection for the definition of "rural area" was based on three primary criteria that would best support the objectives of the Duty to Serve program: (1) the definition should be broad enough to include rural residents living in outlying counties of metropolitan areas; (2) the definition should remain stable over time to support the Enterprises' Plans; and (3) the definition should remain easy to implement and operationalize by the Enterprises.[33]

Revising the "rural area" definition to include all colonia census tracts regardless of location, *i.e.*, whether within or outside an MSA, would be consistent with these three criteria. Regarding the first criterion, in the 2015 proposed rule, FHFA took into consideration a finding that MSAs may no longer be a good way to distinguish urban

[32] 80 FR 79181, 79207 (Dec. 18, 2015).
[33] 81 FR 96242, 96273 (Dec. 29, 2016).

territory from rural territory.[34, 35] Similarly, several commenters on the 2015 proposed rule stated that the proposed definition of "rural area" was overly inclusive within metropolitan areas by including suburban/exurban communities that are not truly rural in character, and overly restrictive within metropolitan areas by excluding some small towns, particularly in the Western U.S., that are truly rural in character.[36] The qualifying parameters in the second component of the "rural area" definition (par. (ii)) were added to the definition in the 2016 final rule in an effort to more accurately target areas that are truly rural in character and exclude those that are more realistically classified as suburban/exurban communities, which do not share the challenges to accessing credit that rural markets face.[37]

FHFA has reviewed the characteristics of the colonia census tracts and believes that all colonia census tracts—regardless of where they are located—share important characteristics with census tracts that already meet the "rural area" definition. Colonia census tracts—regardless of whether they are located within or outside an MSA—have high poverty rates and low housing density, which contribute to limited access to credit for the households in those communities. In fact, as Figure 3 below demonstrates, the estimated poverty rate for all colonia census tracts is higher than the estimated poverty rate in Duty to Serve rural areas in general, and even higher than the estimated poverty rate in other Duty to Serve high-needs rural regions, including the Lower Mississippi Delta and Middle Appalachia. Figure 3 further demonstrates that the estimated housing

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[34] 80 FR 79207 (Dec. 18, 2015) (citing United States Government Accountability Office, GAO-05-110, "Rural Housing–Changing the Definition of Rural Could Improve Eligibility Determinations" (December 2004), available at http://www.gao.gov/new.items/d05110.pdf).
[35] See also The Urban Institute "In Search of 'Good' Rural Data: Measuring Rural Prosperity" (April 2020) available at https://www.urban.org/sites/default/files/publication/102134/in-search-of-good-rural-data.pdf.
[36] 81 FR 96242, 96273 (Dec. 29, 2016).
[37] *Id.*

density, as measured by housing units per square mile, in all colonia census tracts is lower than the estimated housing density in rural areas in general, and even lower than the estimated housing density in other high-needs rural regions, including the Lower Mississippi Delta and Middle Appalachia. In general, areas with both high poverty rates and low housing density are likely to lack resources and experience credit challenges.[38]

Figure 3: Estimated Housing Density and Poverty Rate by Colonia Census Tract and High-Needs Rural Region[39]

Area	Number of Census Tracts	Housing Density (Units per Sq. Mile)	Poverty Rate
All Colonia Census Tracts (DTS "Rural Area" Census Tracts and Other Colonia Census Tracts)	446	7	28%
Lower Mississippi Delta (DTS "Rural Area" Census Tracts)	1,386	17	23%
Middle Appalachia (DTS "Rural Area" Census Tracts)	1,342	30	21%
All DTS "Rural Area" Census Tracts	19,227	10	17%

Source: FHFA Analysis of 2020 FFIEC data based on the 2015 American Community Survey 5-year estimates.

Households residing in colonia census tracts often lack access to affordable home financing and standard mortgage financing.[40] Recent research indicates that census tracts containing colonias have substantially lower rates of mortgage lending than nearly any

[38] Durst, Noah J. and Peter M. Ward, "Colonia Housing Conditions in Model Subdivisions: A Déjà Vu for Policy Makers," Housing Policy Debate 26 (2): 316–333 (2015) available at https://www.tandfonline.com/doi/abs/10.1080/10511482.2015.1068826?journalCode=rhpd20.

[39] FHFA used Federal Financial Institutions Examination Council (FFIEC) census reports to calculate housing densities and poverty rates for these underlying census tracts, and then tabulated estimates of these measures for the respective high-needs rural regions.

[40] Housing Assistance Council, "Colonias Investment Areas: Working Toward a Better Understanding of Colonia Communities for Mortgage Access and Finance," p. 9 (November 2020), available at https://www.fanniemae.com/media/37566/display.

other market nationally.[41] Figure 4 below shows that the average annual ratio of conventional loan originations per 1,000 owner-occupied units in colonia census tracts during the period 2015-2017 was 33.5, or less than half the average annual ratio of 73.7 loan originations per 1,000 owner-occupied units in the United States as a whole. The average annual ratio of conventional loans and government-backed (FHA, VA, USDA) loan originations per 1,000 owner-occupied units in colonia census tracts during the same period was 61.5, compared to an average annual ratio of 100.8 loans per 1,000 owner-occupied units in the United States as a whole.

Figure 4: Ratio of Home Loans Originated to Owner-Occupied Units (Annual Average 2015–2017)

Area	Conventional Loans Originated per 1,000 Owner-Occupied Units (Annual Average 2015–2017)	Total Loans (Conventional and FHA, VA, USDA) Originated per 1,000 Owner-Occupied Units (Annual Average 2015–2017)
All Colonia Census Tracts (DTS "Rural Area" Census Tracts and Other Colonia Census Tracts)	33.5	61.5
United States	73.7	100.8

Source: Wiley, Keith, George, Lance and Lipshutz, Sam, "Colonias Investment Areas: A More Focused Approach," Figure 20, p. 34, CityScape, Vol. 23, Number 3 (November 2021), available at https://www.huduser.gov/portal/periodicals/cityscpe/vol23num3/Cityscape-November-2021.pdf.

Further, high-cost loans are more common in colonia census tracts than in the United States as a whole. HAC research based on tabulations of 2017 Home Mortgage Disclosure Act data showed that 14.4 percent of loans in colonia census tracts were

[41] *See* Wiley, Keith, George, Lance and Lipshutz, Sam, "Colonias Investment Areas: A More Focused Approach," p. 27, CityScape, Vol. 23, Number 3 (November 2021), available at https://www.huduser.gov/portal/periodicals/cityscpe/vol23num3/Cityscape-November-2021.pdf.

classified as high-cost, compared to 5.9 percent of loans in the United States as a whole.[42]

There are indications that access to credit in colonias specifically may be even more limited than in other parts of the colonia census tract.[43] Because of the lack of access to standard mortgage financing, colonia residents often purchase lots through a contract for deed, a property financing method whereby developers typically offer a low down payment and low monthly payments but no title to the property until the final payment is made.[44] If contract-for-deed borrowers miss a payment, they run the risk of losing all of the investment they made in the home, in addition to the danger of losing the home itself.[45] Many residents also rely on self-help strategies, rehabilitating their properties incrementally over time when they have available funds, instead of using conventional financing to make improvements on their homes, because they lack conventional financing options.[46]

Regarding the second criterion discussed in the 2016 final rule preamble—that the "rural area" definition should remain stable over time to support the Enterprises' Plans—the proposed change to the "rural area" definition would, in line with other components of the definition, be based on census tracts and, therefore, remain stable. Since census

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[42] Housing Assistance Council, "Colonias Investment Areas: Working Toward a Better Understanding of Colonia Communities for Mortgage Access and Finance," p. 36 (November 2020), available at https://www.fanniemae.com/media/37566/display.

[43] *Id.* at 9.

[44] *See* The Federal Reserve Bank of Dallas, "Las Colonias in the 21st Century: Progress Along the Texas-Mexico Border," p. 6 (2015), available at https://www.dallasfed.org/~/media/documents/cd/pubs/lascolonias.pdf; and The Federal Reserve Bank of Dallas, "Texas Colonias: A Thumbnail Sketch of the Conditions, Issues, Challenges and Opportunities," p. 3 (1996), available at https://www.dallasfed.org/~/media/documents/cd/pubs/colonias.pdf.

[45] *See* Pew Charitable Trusts, "Less Than Half of States Have Laws Governing 'Land Contracts': Statutes provide limited consumer protection for widely used alternative home financing," (April 30, 2021), available at https://www.pewtrusts.org/en/research-and-analysis/white-papers/2022/02/less-than-half-of-states-have-laws-governing-land-contracts.

[46] Durst, Noah J. and Ward, Peter M., "Measuring self-help home improvements in Texas colonias: A ten year 'Snapshot' study," pp. 2143-2159, Urban Studies, Vol. 51, No. 10 (August 2014), available at https://www.jstor.org/stable/26145856?socuuid=ecc189e2-293e-42c2-83ca-8ff6b40c6e43.

tract boundaries are updated every ten years to reflect changes in population following the decennial U.S. census, FHFA would comprehensively update the colonia census tracts on a similar timeline and include them in FHFA's Rural Areas Data file. Any intervening changes to federal, State, tribal, or local definitions of colonia, or to the identification of colonias under those definitions, that impact the designation of colonia census tracts could be reflected, as appropriate, as an update to FHFA's Rural Areas Data file. FHFA would not expect to make any such updates during a Plan cycle, to ensure that the Enterprises and market participants can base their decisions on a stable definition.

Regarding the third criterion in the 2016 final rule preamble—that the "rural area" definition should remain easy to implement and operationalize by the Enterprises—the proposed definition would improve the Enterprises' ability to implement and operationalize their loan purchase and outreach efforts in colonia census tracts. FHFA would be able to amend the Duty to Serve Rural Areas Data file to include all colonia census tracts regardless of their location. The update of this file would streamline the process of identifying Duty to Serve-eligible loans and enhance certainty for lenders and the Enterprises, who would know from the outset which colonia census tracts to target for loan purchases and outreach and would be certain that those activities would be eligible for Duty to Serve credit. In this manner, the proposed changes to the "rural area" definition would promote the achievement of the objectives of the Duty to Serve program.

Proposed Revision of Regulation's "Rural Area" Definition—§ 1282.1(b)

For the reasons discussed above, FHFA is proposing to amend the definition of "rural area" in § 1282.1(b) to include all colonia census tracts regardless of their location.

Specifically, the proposed rule would amend the second component of the "rural area" definition (par. (ii)) to include colonia census tracts that would not otherwise satisfy the current "rural area" definition.

Request for Comments

FHFA specifically requests comments on the following question (please identify the question answered by the number assigned below):

3. What are the advantages and disadvantages, if any, to revising the Duty to Serve "rural area" definition to incorporate all census tracts that contain a colonia regardless of their location?

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the Agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities (5 U.S.C 605(b)). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act and FHFA certifies that the proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities because the regulation only applies to Fannie Mae and Freddie Mac, which are not small entities for purposes of the Regulatory Flexibility Act.

IV. Paperwork Reduction Act

The proposed rule would not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*.). Therefore, FHFA has not submitted the proposed rule to OMB for review.

List of Subjects in 12 CFR Part 1282

Mortgages; Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, under the authority of 12 U.S.C. 4501, 4502, 4511, 4513, 4526, and 4561-4566, FHFA proposes to amend part 1282 of subchapter E of 12 CFR chapter XII, as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

1. The authority citation for part 1282 continues to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561-4566.

2. Amend § 1282.1(b) by:

a. Adding in alphabetical order the definition of "Colonia census tract";

b. In paragraph (iii) of the definition "High-needs rural region" removing the term "colonia" and adding the term "colonia census tract" in its place; and

c. Revising the definition of "Rural area".

The additions and revisions read as follows:

§ 1282. 1 Definitions.

* * * * *

Colonia census tract, for purposes of subpart C of this part, means a census tract that contains a colonia.

* * * * *

Rural area, for purposes of subpart C of this part, means:

(i) A census tract outside of a metropolitan statistical area as designated by the Office of Management and Budget; or

(ii) A census tract in a metropolitan statistical area as designated by the Office of Management and Budget that is:

(A) Outside of the metropolitan statistical area's Urbanized Areas as designated by the U.S. Department of Agriculture's (USDA) Rural-Urban Commuting Area (RUCA) Code #1, and outside of tracts with a housing density of over 64 housing units per square mile for USDA's RUCA Code #2; or

(B) A colonia census tract that does not satisfy paragraphs (i) or (ii)(A) of this definition.

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/s/
Sandra L. Thompson
Director, Federal Housing Finance Agency

September 27, 2022
Date