



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

March 17, 2016

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

Submitted electronically through www.regulations.gov

**Re: Comments on RIN 2590-AA27, Enterprise Duty To Serve Underserved Markets;
Proposed Rule**

Dear General Counsel Pollard:

We submit the following comments on behalf of the Consortium for Citizens with Disabilities (CCD) Housing Task Force regarding *RIN 2590-AA27, Enterprise Duty To Serve Underserved Markets; Proposed Rule*. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the approximately 57 million children and adults with disabilities and their families living in the United States. CCD advocates for national public policy that ensures full equality, self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

The CCD Housing Task Force appreciates the opportunity to comment on this issue. Specifically, we are responding to two questions related to **Affordable Housing Preservation: Question 30**, “Are there other ways the Enterprises can support the statutorily-enumerated programs in addition to those discussed above?”, and **Question 35**, “**Are there ways in which the Enterprises could support the HUD Section 811 Housing Program for Disabled Households?**”

The proposed rule in Section c. Statutory Activities, Subsection v. states, “There is no obvious role for the Enterprises to support projects funded under this [Section 811] program and the Enterprises have never supported mortgage financing under this program.” However, under the Request for Comments section below, FHFA specifically requests comments on whether there are ways the Enterprises could support the Section 811 program.

The CCD Housing Task Force respectfully suggests that the Enterprises could in several ways support the Section 811 program as well as other HUD programs that serve individuals and families with extremely low income (“ELI families”).

FHFA Should Ensure Compatibility with Programs that Serve ELI Families

Section 1129 of the Housing and Economic Recovery Act (HERA; P.L. 110-289) did not include ELI families (those earning less than 30 percent of the area median income) under the Enterprises' "Duty to Serve Underserved Market" obligations.¹ However, many of the federal programs listed under HERA's Duty to Serve requirements for "Affordable Housing Preservation" are in fact targeted to serve ELI families.² These include the Section 811 Supportive Housing for Persons with Disabilities program, as well as the project-based and tenant-based rental assistance programs under the Section 8 program, the Section 202 Supportive Housing for the Elderly program, and programs under the McKinney-Vento Homeless Assistance Act that provide permanent supportive housing.

Nationwide, an urgent need exists for the Enterprises to facilitate the preservation of federally assisted housing targeted to ELI families. According to the National Low Income Housing Coalition (NLIHC), analysis of the 2014 American Community Survey (ACS) finds that for the 10.4 million ELI renter households across the U.S., there are only 5.8 million rental units that they can afford (using the standard affordability measure of spending no more than 30% of household income on gross housing costs). The result is an absolute shortage of 4.6 million rental homes for ELI renter households nationwide. The NLIHC notes that the situation is in actuality much worse, because many of the units that are affordable to ELI households are in fact rented and occupied by higher income households. The NLIHC estimates the nationwide shortage of affordable and available rental homes for ELI households at 7.2 million.

The CCD Housing Task Force recommends that FHFA ensure that the Enterprises develop products and underwriting guidelines that are compatible with the customized, complex transactions often required to preserve properties developed under these programs to ensure they can continue to serve ELI families. This can include modifying policies around required reserves, timelines for loan processing, and developer guarantees. The Enterprises should **not** seek to layer additional use restrictions on top of those required by HUD, state agencies, localities, or regulators.

FHFA Should Ensure that the Enterprises Support the Section 811 Supportive Housing for Persons with Disabilities Program in Several Ways

First, Section 240 of the Consolidated Appropriations Act, 2016 (P.L. 114-113) allows previously funded Section 811 projects that have become obsolete to refinance projects to transfer capital to alternative assets (for example, to assets compliant with Centers for Medicare and Medicaid integration requirements for home and community-based settings under Medicaid). This transaction is complex and requires an understanding of disability-related public policy issues as well as the regulatory requirements of service funder. This transaction may require the support of the Enterprises to be successful.

¹ See 12 U.S.C. 4565(a)(1).

² See 12 U.S.C. 4565(a)(1)(B).

Second, in 2011, President Obama signed into law the *Frank Melville Supportive Housing Investment Act of 2010* (“Melville Act”; P.L. 111-374), which modernized the Section 811 program. This innovative, bipartisan legislation passed overwhelmingly in both the House and the Senate. The Melville Act made a number of modifications to the Section 811 program, the most prominent of which was the creation of the new Section 811 Project Rental Assistance (PRA) program. Under the PRA program HUD provides project rental assistance to state housing agencies to develop integrated, affordable housing for extremely low-income people with disabilities in multifamily developments; no more than 25% of the units in these multifamily developments can be set-aside for people with disabilities. Unlike other Section 811 programs, no Section 811 funds may be used for capital costs under the PRA program.

The new, integrated Section 811 housing model responds to requests from the disability community – including people with disabilities covered by the Supreme Court’s decision in *Olmstead v. L.C.* who are living in institutions and seeking to move into the community – for other housing opportunities. The CCD Housing Task Force has strongly supported the modernizations under the Melville Act and has championed the new Section 811 PRA program.

Federal appropriation acts in FY 2012, 2013 and 2014 provided Section 811 funding ONLY for the PRA program and not for any of the Section 811 options that include capital funding; no new Section 811 units of any type were funded in FY15 or FY16.

The CCD Housing Task Force recommends that FHFA ensure that the Enterprises play an important role in moving the new Section 811 PRA program forward by ensuring that new multifamily developments that include set-asides for PRA units as well as multifamily developments with PRA units seeking to refinance do not encounter financing barriers as they move forward. As discussed above, the Enterprises can play an important role in ensuring compatibility with Section 811 in affordable housing preservation.

Finally, in addition to the specific comments above, the CCD Housing Task Force concurs with the comments submitted by the **National Low Income Housing Coalition**.

Thank you for your consideration.

Sincerely,

T.J. Sutcliffe
The Arc of the United States
sutcliffe@thearc.org
202-783-2229

Andrew Sperling
National Alliance on Mental Illness
andrew@nami.org
703-516-7222

CCD Housing Task Force Co-Chairs