



VIA EMAIL

September 7, 2010

Alfred M. Pollard, General Counsel  
Federal Housing Finance Agency, Fourth Floor  
1700 G Street, NW  
Washington, DC 20552

Re: Comments on Proposed Rulemaking: Office of the Ombudsman; RIN 2590-AA20

Dear Mr. Pollard:

Fannie Mae appreciates the opportunity to submit comments in response to the Notice of Proposed Rulemaking, published on August 6, 2010<sup>1</sup> (the “Proposed Rule”), addressing the requirements of Section 1317(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (the “1992 Act”).<sup>2</sup>

Section 1317(i) requires the Federal Housing Finance Agency (“FHFA”) to establish within FHFA an Office of the Ombudsman. The Office of the Ombudsman is to be responsible for considering complaints and appeals from Fannie Mae, Freddie Mac and the Federal Home Loan Banks (together, the “Regulated Entities”), and any person that has a business relationship with a Regulated Entity, with respect to FHFA’s regulation and supervision of the Regulated Entities.

Fannie Mae acknowledges the obligation of FHFA to establish the Office of the Ombudsman and supports FHFA’s efforts to be consistent with the federal banking agencies in the establishment of the office. Fannie Mae, however, believes that two aspects of the Proposed Rule would benefit from further consideration. First, the Proposed Rule defines “business relationship” to include “potential” relationships,<sup>3</sup> which increases exponentially the universe of persons to whom the rule will apply. Second, the Proposed Rule could be interpreted to permit the Office of the Ombudsman to address business decisions made by the Regulated Entities, rather than limiting its authority to complaints regarding regulatory actions taken by FHFA.

**Definition of “Business Relationship.”** Section 1317(i) of the 1992 Act states that FHFA shall establish an Office of the Ombudsman within the agency with responsibility “for considering complaints and appeals, from any regulated entity and any person that has a business relationship with a regulated entity. . . .” As FHFA is fully aware, the Regulated

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<sup>1</sup> 75 Fed. Reg. 47,495 (Aug. 6, 2010).

<sup>2</sup> 12 U.S.C. § 4517(i).

<sup>3</sup> Proposed 12 C.F.R. 1213.2.

Entities have thousands of business relationships with entities throughout the country that are either directly involved in the primary and secondary mortgage market or otherwise provide goods and services that allow the Regulated Entities to function on a daily basis. By specifying that the Office of the Ombudsman would deal with complaints from any entity with whom a Regulated Entity “has” a business relationship, the 1992 Act limited the population of complainants to those persons with a current and active relationship with a Regulated Entity that would be directly affected by an action by FHFA.

By adding the reference to persons with “potential” relationships with the Regulated Entities, the Proposed Rule makes the population of potential complainants virtually limitless, and puts at risk the ability of the Office of the Ombudsman to focus on those matters that the statute intended. Accordingly, Fannie Mae proposes striking “or potential relationship” in the definition of “business relationship.”

Matters Subject to Complaints. Section 1317(i) further states that the Office of the Ombudsman is to handle complaints “regarding any matter relating to the regulation and supervision of such regulated entity by [FHFA].” The Proposed Rule states that a person with a business relationship or potential business relationship with a Regulated Entity may submit a complaint regarding any such matter, but also states that the “Ombudsman may further define what matters are subject to complaints.”<sup>4</sup>

FHFA noted in the Proposed Rule that it had reviewed the functions of ombudsmen at the federal banking agencies. The banking agencies are required to have an Office of the Ombudsman by Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994.<sup>5</sup> This statute states that the function of the ombudsman is to act as a liaison between the agency and a person with respect to issues affecting such person “resulting from the regulatory activities of the agency.”<sup>6</sup>

Section 309 did not require the federal banking agencies to establish their ombudsman offices by regulation. Rather, the agencies have established policies and procedures to define the functions and responsibilities of the offices. In most cases, the purpose of the Office of the Ombudsman, consistent with Section 309, is to address issues arising from the regulatory activities of the agency. An exception is the Office of the Comptroller of the Currency (“OCC”), which has put responsibility for its Customer Assistance Group within the Office of the Ombudsman. The OCC reported that during the first 3 quarters of 2009, the Customer Assistance Group handled more than 40,000 complaints.<sup>7</sup>

Fannie Mae suggests that the Proposed Rule, when final, should specifically limit the responsibilities of the ombudsman to regulatory activities of the agency, and should make clear that business decisions of the Regulated Entities are not within the scope of the ombudsman’s responsibilities. Recognizing that the OCC regulates many more separate

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<sup>4</sup> Proposed 12 C.F.R. § 1213.5(b).

<sup>5</sup> 12 U.S.C. § 4806(d).

<sup>6</sup> *Id.*

<sup>7</sup> Office of the Comptroller of the Currency, Annual Report Fiscal Year 2009 at 44 (<http://www.occ.treas.gov/annrpt/4-2009AnnualReportSectionFour.pdf>).

institutions, the language of the Proposed Rule still creates a formal complaint process that will be available to a large number of persons and entities and that could overwhelm the Office of the Ombudsman and divert attention from those issues for which the office was created. Accordingly, Fannie Mae proposes that two sections of the Proposed Rule be revised to read as follows:

**§ 1213.1 Purpose and scope.**

*(b) Scope.*—(1) This part applies to complaints and appeals regarding any matter arising from actions by or decisions of FHFA relating to the regulation or supervision of any regulated entity or the Office of Finance. The part does not apply to complaints by persons regarding any matter arising from actions by, or decisions of, the regulated entity or the Office of Finance.

**§ 1213.5 Complaints by a person.**

A person may submit a complaint regarding any matter affecting such person resulting from the regulatory or supervisory activities of the FHFA, in accordance with procedures established by the Ombudsman.

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Thank you for allowing us to present these views. If you have questions regarding the matters addressed herein, please feel free to contact the undersigned at 202/752-6528.

Sincerely,



Julie E. Katzman  
Vice President and  
Deputy General Counsel