NMHC National Multi Housing Council®
Apartments: Smart Communities, Smarter Living

NATIONAL APARTMENT ASSOCIATION

May 29, 2009

Alfred M. Pollard
General Counsel
Attention: Comments "Portfolio Holdings" IFR/RFC, [RIN 2590-AA22]
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552

Dear Mr. Pollard:

The National Multi Housing Council (NMHC) and the National Apartment Association (NAA) are pleased to submit comments on the Interim Final Rule governing the portfolio holdings of Fannie Mae and Freddie Mac, the "GSEs". The attached comments address the impact of use of the retained investment portfolio for multifamily mortgage purchase activities. NMHC/NAA have selected to respond to those questions that are relevant specific to multifamily mortgage purchase activities and not to broader portfolio, capital allocation and risk-based capital issues.

The GSEs continue to be of vital importance to the multifamily industry, its owners, investors and to the 16.5 million apartment households. The GSEs have played a key part in the multifamily industry's ability to meet the nation's rental housing needs the past 30 years. The GSEs serve just about every type of rental housing from that which is targeted at low-income families to meeting the needs of a growing senior population. Both firms have pioneered multifamily housing finance through an extensive range of mortgage offerings. Be it a credit enhancement of tax-exempt multifamily bonds or the provision of a credit facility to re-invest in existing apartment communities, sharing risk with HUD to preserve existing work-force housing or expanding the housing options at our nations universities and colleges, Fannie Mae and Freddie Mac have not only met the growing needs of the multifamily industry, including the changing demographics of its residents, but have provided the groundwork for other sources of capital to extend their resources to the apartment industry.

As you are keenly aware, the two companies have done this with prudent and effective underwriting, demonstrated by their extremely low level of portfolio distress over the past two decades. Not only have they done a sound job in underwriting and managing risk in their multifamily business activities, they have been focused on meeting the housing goals established in support of their public mission.

The National Multi Housing Council and National Apartment Association strongly endorse the continued support for multifamily mortgage lending by Fannie Mae and Freddie Mac. We encourage the Federal Housing Finance Agency to develop a policy that responds to market needs and sound and prudent capital management. The use of retained portfolio mortgage lending in combination with securitization is the only viable means to best respond to both needs. Securitization or portfolio lending activities must

1850 M Street, NW, Suite 540 ▪ Washington, DC 20036 ▪ 202.974.2300 ▪ FAX 202.775.0112 ▪ www.nmhc.org ▪ info@nmhc.org

be targeted or limited to specific type(s) of multifamily properties, borrowers or purposes but it should be to ensure a stable and viable market for financing all rental housing. The policy should strengthen the ability of the GSEs to meet the wide range of mortgage needs encompassing the preservation of older properties, development of mixed-income and mixed-use developments, promoting energy efficient and transit, urban and rural area multifamily communities.

We welcome your questions and the opportunity to discuss any of our comments. Thank you for your consideration and we look forward to working with you in your efforts to support the development and preservation of affordable rental housing. Please contact David Cardwell, NMHC Vice President of Capital Markets and Technology, at (202) 974-2336 or dcardwell@nmhc.org, with any questions.

Sincerely yours,

Douglas M. Bibby
President
National Multi Housing Council

Douglas S. Culkin, CAE
President
National Apartment Association

Attachment as stated

Many of the specific questions contained in the request for comments relate to broader issues associated with the single-family and multifamily mortgage purchase activities. Therefore, we have prepared the attached responses to address the most relevant questions in order to focus our comments on the multifamily industry.

Question 1: What additional benefits are provided to the secondary mortgage market and the housing sector by Enterprise purchases for portfolio of mortgage loans and MBS, beyond the benefits provided by their securitization activities? What is the magnitude of those additional benefits?

Fannie Mae and Freddie Mac provide a unique mission in providing rental housing financing. The secondary market, through MBS issued by Fannie Mae or Freddie Mac created many of the benefits seen in the commercial mortgage-backed securities (CMBS) markets today. Freddie Mac issued multifamily securities in the 1980's and moved primarily to purchases for the retained portfolio the past 20 years, with exceptions for pool and other structured transactions. Fannie Mae purchased for portfolio in the early 1990s and has offered both securitized and portfolio purchase executions for many years.

Having the latitude has enabled the two firms to maximize their ability to serve a wide range of affordable and conventional apartment mortgage finance needs and to extend their reach to niche areas including, but not limited to, seniors housing, student housing and even rental housing near military installations.

The two firms have expanded their mortgage share from under 10 percent to over 30 percent, illustrating their impact on the multifamily sector.

Question 2: Is it possible for the Enterprises to fulfill their mission of providing stability and liquidity to the secondary mortgage market without purchasing mortgage assets for portfolio? If so, how? If not, what types of mortgage assets should they be allowed to purchase for portfolio, and in what amounts?

There should be a set-aside for multifamily mortgages in the retained portfolio. This is prudent for the reasons noted in question one. Forcing the GSEs to securitize multifamily mortgages will add to the risk profile of their mortgage portfolio, as they lose flexibility in controlling the asset and in risk mitigation, unlike their assets held in portfolio. Due to the complexity of multifamily mortgage lending, holding the mortgages in the retained investment portfolio allows the GSEs to better manage the variety of risks associated with the loans.

Being able to direct the mortgage servicer to take actions to mitigate risk can more effectively be undertaken when the GSE is acting on behalf of the company investors and not the security investors. In a MBS, the GSE obligation is to ensure payment of principal and interest and, should the mortgage not perform as agreed, pay the investors a (guarantee) fee. As such, the interests of the GSE are not always in alignment with the security agreement, and the risk profile is greater when the mortgage is held in security.

The most relevant example of this situation is the current level of problems experienced in the CMBS market place and the issues that Freddie Mac faced in 1988-1993 as it paid guarantee fees on over $3 billion in multifamily mortgage securities where the underlying mortgage defaulted. Freddie Mac could not pro-actively undertake remediation actions to prevent default and disinvestment in the real estate.

Question 3: Could the U.S. government better ensure the liquidity and stability of the secondary mortgage market other than through Enterprise purchases of mortgage assets for portfolio—for example, through the activities of the Federal Reserve System, mortgage asset purchases by the Department of the Treasury, or the provision of an explicit government guarantee of MBS securitized by the Enterprises?

There need to be options for the GSEs to meet their mission and respond to the capital needs of the market. It could be argued that Fannie Mae's and Freddie Mac's mortgage programs are much more effective than that of FHA, but limiting their approach to insured MBS would limit the options in the market, and would direct many borrowers to other, more costly sources of mortgage capital, such as insurance companies and banks. Regardless of how the mortgages are held, through guaranteed securities or in retained portfolio, the cost of an explicit/implicit government guarantee provides lower capital costs. The FHA products are much less flexible and reach a much less diverse universe of properties and borrowers. FHA multifamily mortgage volume peaks during times when options are fewer, while Fannie Mae and Freddie Mac have continued to capture a large market share in most market circumstances - - see question #4 response.

Question 4: Should the Enterprises' purchases of mortgage assets vary over the mortgage credit cycle or with conditions in the secondary mortgage market? If so, how?

Fannie Mae and Freddie Mac have been a constant source of mortgage capital to the multifamily market and their active presence throughout the real estate cycles is critical. During times when all of the sources of mortgage capital are available to the market, Fannie Mae and Freddie Mac influence innovation and competition in the market through their competitive pricing and variety of mortgage products and terms. During times when some or most sources of mortgage capital become scarce, they provide stability and support to this critical housing sector. They also provide liquidity to the banking and construction capital sector as a take-out, provide the basis for uniform lending and mortgage documents, create innovations in areas such as promoting technological advancements and the prudent risk management practices of exposure to environmental hazards, earthquake risk, etc. Their operations and maintenance programs for lead-based paint, earthquake risk assessment and meeting market needs where some lenders may not be as active, is critical throughout the mortgage cycle.

Question 5: If the Enterprises purchase large volumes of mortgage assets during periods of stress or turmoil in the secondary mortgage market, should they be required to sell those assets once that market stabilizes?

No Response

Question 6: Could the benefits of the Enterprises' mortgage portfolio holdings be achieved if the levels of those holdings were substantially lower than current levels? Could the Enterprises carry out their mission of providing stability and liquidity to the secondary mortgage market and of supporting affordable housing without maintaining portfolios of mortgage assets? If so, explain how.

No Response

Question 7: Aside from reducing the volume or altering the composition of mortgage assets held by the Enterprises, are there other ways in which FHFA can use criteria governing their mortgage portfolio holdings to reduce their exposure to or improve their management of interest rate, credit, operational, and other risks? If so, what approaches should FHFA take?

One means would be to develop a better risk-sharing arrangement for multifamily mortgage purchases with HUD/FHA that would provide greater incentives on selected properties. The government should take a greater interest in higher-risk public-mission transactions and use the other market-rate multifamily mortgage purchase transactions undertaken by the GSEs to diversify the multifamily portfolio and reduce the concentration risk associated with affordable housing loans. This would both enable the GSEs to take a more aggressive approach to targeted affordable housing through utilization of the government's capital through the FHA multifamily insurance fund.

Question 8: How can FHFA best use criteria governing mortgage portfolio holdings, in conjunction with capital regulations and other supervisory tools, such as prudent management and operations standards established in accordance with section 1313B of the Safety and Soundness Act, to address the Enterprises' exposure to the additional risks posed by such holdings?

The GSEs have demonstrated prudent oversight of their multifamily loan portfolios. The capital requirements should be based on long-term performance by loan term, geographic concentration and other portfolio risk assessment, along with their market exposure compared to banks, insurance companies, FHA, credit firms and state housing agencies.

Question 9: Should FHFA use criteria governing the Enterprises' mortgage portfolio holdings to mitigate the systemic risk posed by the Enterprises? If so, how? If the mortgage portfolio holdings of the Enterprises were reduced in an effort to mitigate the systemic risk posed by the Enterprises, how would the stability of the mortgage markets and the broader financial system be affected? What steps could the federal government take to maximize any improvement in stability?

Due to the size of the GSEs' multifamily portfolio relative to their overall portfolio holdings, the systemic risk issues are hard to quantify and determine, but we would argue that there is essentially no systemic risk though their multifamily lending operations.

Question 10: Should the size of the Enterprises' mortgage portfolio holdings be limited to a fixed dollar amount, be linked to a market indicator, or be linked to the size of their MBS outstanding?

Establishing a limit on the portfolio must account for the impact of such limitations on the other capital sources and demand from the multifamily market. Given the growth in GSE multifamily mortgage debt outstanding and the strong performance of the multifamily portfolios, multifamily mortgage purchases held in portfolio should not be limited. The GSEs should be encouraged to balance their mortgage activities among securitized and portfolio, but there should not be a limit placed on the purchases for the portfolio, as this could inadvertently prohibit business profitability that could offset losses or less profitable business lines in other sectors.

Question 11: Should the permissible size of the Enterprises' holdings of mortgage assets vary in a manner related to the phase of the mortgage credit cycle or conditions in the secondary mortgage market? If so, how should FHFA monitor that cycle or secondary mortgage market conditions, and how should the permissible size of those holdings vary?

Please see response to question #4.

Question 12: How could decreases in the Enterprises' mortgage portfolio holdings affect their operational infrastructures? How would changes in their operational infrastructures affect their ability to expand their purchases of mortgage assets for portfolio during times of stress in the secondary mortgage market? Does each Enterprise need a minimum level of mortgage portfolio holdings to maintain the infrastructure needed to expand its purchases under such conditions?

No response

Question 13: Should each Enterprise's minimum capital requirement increase with the size or composition of its mortgage portfolio holdings? If so, how should such increase be imposed? Should a capital surcharge be imposed on each Enterprise if its mortgage portfolio holdings exceed some level? If so, how should such surcharge be imposed?

Due to the size of the multifamily portfolio relative to the large size of the single-family portfolio, it is not necessary to impose an additional capital set-aside beyond that specific to the risk associated with the multifamily loan portfolio characteristics and performance.

Question 14: Should FHFA restrict the types of mortgage assets the Enterprises are allowed to hold to those that are strictly related to specific elements of their mission? If so, how should those assets be defined? For example, should FHFA prohibit or place a limit on each Enterprise's holdings of mortgage-related securities guaranteed by the other Enterprise or Ginnie Mae or its holdings of private-label MBS?

No response

Question 15: Should FHFA require that assets purchased for the portfolio each year comply with affordable housing goals and sub-goals established for that year?

Multifamily housing is generally more affordable and in many areas is supportive of economic activity and neighborhood vitality. Managing incentives through mission-based goals as opposed to limitations on portfolio investments is more appropriate.

Question 16: Should FHFA allow the Enterprises to hold, without limit, either whole loans (or securities backed by them) that finance affordable housing not easily securitized because of non-standard features and small volumes or mortgage securities backed by loans that finance affordable housing, where markets for those securities are small or thin? Please provide examples of such loans or securities. Alternatively, should FHFA place a limit on the amount of such loans or securities that an Enterprise can hold? If so, what is an appropriate level?

Fannie Mae and Freddie Mac should be encouraged to undertake lending on multifamily affordable housing regardless of investment for the retained portfolio or securitized execution. Both executions should be considered when evaluating the risk associated with the transaction. Because multifamily lending is more specific to each mortgage and less of a commodity than single-family mortgages, it is not reasonable to establish firm requirements for affordable lending specific to the portfolio or securities execution process.

Question 17: Should FHFA establish criteria governing the Enterprises'' mortgage portfolio holdings that specify that the Enterprises adherer to a specific maximum ratio of short-term debt to mortgage assets or minimum ration of callable debt to long-term fixed-rate mortgage assets or to total long-term debt?

No response

Question 18: Should FHFA specify criteria that condition enterprise mortgage portfolio holding above a certain amount on maintaining measures of the risks – e.g., duration and convexity – associated with those portfolios within specified levels?

No response

Question 19: Should FHFA create incentives for the Enterprises to behave in a counter-cyclical manner through criteria governing their portfolio holdings of mortgage and non-mortgage assets, regulatory capital requirements, or both? If so, how? What are the implications of specifying such criteria for the Enterprises' mission?

No response

Question 20: What risks and costs are associated with requiring the Enterprises to maintain a portfolio of liquid, non-mortgage assets?

No response

Question 21: Is it appropriate to require the Enterprises to hold a large portfolio of highly liquid assets even during periods of market tranquility? If so, why? Should the Enterprises be compensated for holding "excess" levels of non-mortgage assets during periods of market tranquility? If so, what are appropriate incentives?

No response.

Question 22: Should the Enterprises be required to maintain a specific minimum dollar amount of highly liquid non-mortgage assets at all times? If so, what is an appropriate dollar amount? Alternatively, should the level of non-mortgage assets be set at a percentage of an Enterprise's total assets or a specified number of days of liquidity? If so, what is an appropriate percentage factor or number of days?

No response

Question 23: Should the Enterprises' non-mortgage portfolios grow with the phases of the mortgage credit cycle or counter to that cycle? Should the Enterprises be given incentives for holding large volumes of liquid non-mortgage assets during periods of ample market liquidity? If so, how should such incentives be provided? For instance, after criteria governing holdings of non-mortgage assets are established, FHFA could reduce each Enterprise's minimum capital requirement by, for example, 75 percent of the amount of non-mortgage assets held to comply with those criteria.

No response

Question 24: Should the criteria enumerate the specific types of investments the Enterprises should hold in the non-mortgage portfolios. If so, what type assets should be included? Should U.S. Treasury securities represent a specific share of the non-mortgage portfolios? If so, what is an appropriate percentage or dollar amount?

No response

Question 25: What is an appropriate maturity range for securities comprising the non-mortgage portfolios? How should holdings be distributed according to that range?

No response

Question 26: Should FHFA attempt to specify in advance how it might adjust criteria governing Enterprise mortgage or non-mortgage portfolio holdings in specific circumstances?

No response