



May 22, 2009

Alfred M. Pollard  
General Counsel  
Attention: Comments/RIN 2590-AA25  
Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, Northwest  
Washington, DC 20552

Dear Mr. Pollard:

The National Community Reinvestment Coalition (NCRC) asks that the Federal Housing Finance Agency (FHFA) bolster its anti-predatory lending screen, which is used to prevent abusive loans from qualifying for the affordable housing goals required for the Government Sponsored Enterprises (GSEs or Fannie Mae and Freddie Mac). In particular, NCRC urges the FHFA to adopt the anti-predatory lending standards in the Federal Reserve's July 2008 ruling amending Regulation Z, which implements the *Homeownership and Equity Protection Act* (HOEPA).

NCRC is an association of more than 600 community-based organizations that promotes access to basic banking services, including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families. As an association of community-based organizations, NCRC and our member organizations have witnessed firsthand the destruction caused by abusive lending practices that have wiped out billions of dollars in home equity and continue to destabilize neighborhoods.

NCRC agrees with the FHFA that Fannie Mae and Freddie Mac were not the enablers of reckless lending. Testimony and presentations of FHFA Director James Lockhart show that the GSE market share of loans fell significantly during the boom years of subprime lending from 2004 through 2007. Moreover, GSE delinquency rates have remained lower than the rates of all loans (prime and subprime loans).<sup>1</sup> While the overwhelming statistical evidence suggests that the GSEs remained more prudent than Wall Street investors and mortgage companies during the height of reckless lending, it is also true that the GSEs were becoming more involved in financing subprime and nontraditional loans. In order to ensure that the GSEs safeguard against irresponsible lending practices in the future, the FHFA must take the lead on prohibiting the GSEs from financing loans with abusive terms and conditions.

Several years ago, the former GSE regulator the US Department of Housing and Urban Development (HUD) established prohibitions regarding loans with certain terms and conditions from counting towards the affordable housing goals. In July of 2008, the

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<sup>1</sup> See <http://www.fhfa.gov/webfiles/1659/WHFSymposiumFinalr.pdf>

Federal Reserve Board updated its HOEPA regulations to include more stringent prohibitions. In order to align the anti-predatory lending regulations of the GSEs with the regulations of the primary market (i.e., lending institutions), NCRC urges the FHFA to adopt the prohibitions and limitations in the 2008 Federal Reserve HOEPA ruling as part of the GSE affordable housing rule.

The following examples demonstrate the need to strengthen the GSE affordable housing rule regarding anti-predatory lending:

*Ability-to-Repay* – The existing GSE affordable housing rule prohibits the GSEs from counting loans towards the affordable housing goals when the lender did not consider the borrower’s ability-to-repay based on an analysis of the borrower’s income and total debts. The Federal Reserve’s HOEPA rules included underwriting requirements for high-cost loans. For high-cost loans (defined as loans reported as high-cost under the Home Mortgage Disclosure Act data), the lender must assess the borrower’s ability-to-repay at the fully-indexed and amortizing rate or at the maximum monthly payment within the first seven years in the case of step-rate loans (such as 2/28’s or 3/27s).

*Prepayment Penalties* – The existing GSE rule prohibits prepayment penalties except when the penalty is offered in exchange for borrowers’ benefits including a rate or fee reduction; and the borrower was offered a loan without a prepayment penalty. In the Federal Reserve rule, prepayment penalties are banned if the rate or monthly payment changes within the first four years for a high-cost loan. For other high-cost loans, prepayment penalties must expire after two years.

*Escrows* – The existing GSE rule has no provisions regarding escrows. The Federal Reserve rule requires that lenders establish escrows on high-cost loans; borrowers can opt out of escrows after one year.

NCRC appreciates that the existing GSE rule prohibits loans from counting towards the affordable housing goals if the loans contain points and fees exceeding 5 percent of the loan amount. In addition, single premium credit insurance is prohibited. In general, however, the Federal Reserve rule is stronger than the GSE rule. The FHFA must consider adopting the prohibitions and limitations in the Federal Reserve ruling. In addition, for future rulemaking, the FHFA should carefully consider anti-predatory legislation. Recently, the House of Representatives passed H.R. 1728, which contains provisions limiting yield spread premiums, prepayment penalties, and other limitations that are stronger than the Federal Reserve rule. On the Senate side, S. 2452 (introduced in the 110<sup>th</sup> Congress) also had stronger provisions than the Federal Reserve and GSE rules.

NCRC recommends the institutionalization in the affordable housing goals of the appraiser independence safeguards of the revised Home Valuation Code of Conduct (HVCC) effective May 1, 2009. Loans violating the HVCC must not be allowed to count towards the affordable housing goals. The revised HVCC, based on an agreement between Fannie Mae and Freddie Mac, the Federal Housing Finance Agency, and the


New York State Attorney General Andrew Cuomo motivates industry best practices, encourages independence in the appraisal process, and addresses safety and soundness concerns.

NCRC understands the rationale for the FHFA's proposal to lower the affordable housing goals for 2009 in the wake of reduced lending in the capital marketplace. Tables in the proposed rule carefully describe the GSEs' goal attainment and the primary market's lending percentages under each of the three affordable housing goals during the last few years. The primary market's percentages of loans under the three affordable goals declined, with the decline most pronounced for the low- and moderate-income goal. Nonetheless, the FHFA is setting the underserved areas and special affordable housing goal too low for 2009. The primary market's percentages of loans under these two goals did not decline as much as its percentage of loans under the low- and moderate-income goal. For example, 40.1 percent of the primary market's loans would qualify for the underserved areas' goal in 2007, but the FHFA would establish the GSE underserved area goal at 37 percent in 2009. Fannie Mae had achieved a 2008 performance of 39.4 percent while Freddie Mac was at 37.7 percent under the underserved goal. It seems as though a goal higher than 37 percent in 2009 is achievable for both GSEs, considering their most recent performance as well as the primary market's lending levels.

NCRC supports the FHFA's decision to exclude B & C loans when considering GSE goals and primary market performance under the goals. Since the goal setting is based on the least risky lending in the marketplace, the goal setting encourages the GSEs to maintain and increase their service to low- and moderate-income borrowers and neighborhoods consistent with safety and soundness.

NCRC appreciates the opportunity to comment on this important matter. If you have any questions, please feel free to contact me or Josh Silver, Vice President of Research and Policy, on 202-464-2708.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Taylor', with a stylized flourish at the end.

John Taylor  
President and CEO  
NCRC