NATIONAL ASSOCIATION OF HOME BUILDERS

DAVID L. LEDFORD
SENIOR VICE PRESIDENT
HOUSING FINANCE AND LAND DEVELOPMENT

September 18, 2009

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

Re: Federal Housing Finance Agency
12 CFR Part 1282
RIN-2590-AA27
Duty to Serve Underserved Markets for Enterprises
Advance Notice of Proposed Rulemaking and Request for Comment

Dear Mr. Pollard:

On behalf of the National Association of Home Builders (NAHB), I would like to submit comments on the above-referenced notice, published in the *Federal Register* on August 4, 2009. NAHB is a Washington-based trade association representing more than 200,000 member firms involved in all aspects of residential construction, including the building, operation, and management of affordable rental properties. NAHB is also affiliated with more than 800 state and local associations. NAHB, its members, and its local building industry associations all have a strong interest in the activities of Fannie Mae and Freddie Mac because they are critical components of the nation's housing finance system, playing a vital role in maintaining mortgage market liquidity and stability and promoting affordable housing.

Background

The Housing and Economic Recovery Act (HERA) established a duty for Fannie Mae and Freddie Mac (the Enterprises) to serve three underserved markets: manufactured housing, affordable housing preservation and rural areas. The purpose of establishing the duty to serve requirement is to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing in those markets. The Enterprises are required to provide leadership to the market in developing loan products and flexible

1201 15th Street, N.W.
Washington, D.C. 20005
202.266.8265; fax 202.266.8333

underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low- and moderate-income families with respect to manufactured housing, affordable housing preservation and rural markets.

HERA requires the Federal Housing Finance Agency (FHFA), which also has responsibility to establish, monitor and enforce the affordable housing goals for the Enterprises, to determine the characteristics and types of transactions and activities that should be considered and how such transactions and activities should be evaluated and rated for purposes of the duty to serve requirement. However, any activity related to the duty to serve requirement must be consistent with the Safety and Soundness Act and the safe and sound operation of the Enterprises, and the public interest.

Underserved Markets

Manufactured Housing

FHFA has requested comments regarding the advisability of considering personal property loans that are secured by manufactured housing for the purposes of the "duty to serve" requirements under the Safety and Soundness Act. FHFA also requested comments regarding the relative advantages and disadvantages of personal property loans secured by manufactured housing as compared to land-home loans and/or real estate loans where manufactured housing is titled as part of the real estate.

NAHB Comments

NAHB does not believe that the Enterprises should engage in the purchase or guarantee of personal property loans of any type, including those that are secured by manufactured housing. Manufactured housing units that are not titled along with the real estate to which they are permanently sited depreciate rapidly once they are moved from a dealer's sales lot. The loss of resale value would make recovery of value following a default very problematic.

Affordable Housing Preservation

The Enterprises are required to develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income borrowers, including housing projects subsidized under the following programs:

- Section 8 project-based and tenant-based rental assistance;
- Section 236 rental and cooperative housing;
- Section 221(d)(4) new construction and substantial rehabilitation rental housing;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities;

- McKinney-Vento Homeless programs;
- Section 515 rural rental housing;
- Low Income Housing Tax Credits (LIHTCs) under Section 42 of the Internal Revenue Code;
- Comparable state and local affordable housing programs.

FHFA seeks specific comments on the following questions:

- How can the Enterprises assist the affordable housing rental programs in meaningful and measurable ways?
- Should the Neighborhood Stabilization Program be considered to meet the duty to serve the affordable housing preservation market and how could the Enterprises provide assistance?
- Are there other state and local programs, including foreclosure prevention, which should be considered for the duty to serve the affordable housing preservation requirement?

NAHB Comments

NAHB believes that the Enterprises can assist with the preservation of affordable rental housing by providing both debt and equity for preservation loans. Up until two years ago, the Enterprises were significant purchasers of LIHTCs. To the extent that either or both Enterprises are able to re-enter the LIHTC market, more investment in preservation projects would be desirable. Investing in LIHTCs that preserve affordable rural multifamily rental properties is particularly important, as there are few sources of equity available to recapitalize and rehabilitate these aging, but important, affordable housing resources.

NAHB believes that the Neighborhood Stabilization Program (NSP), as well as other state or local foreclosure prevention programs, should be eligible for consideration towards meeting the duty to serve the affordable housing preservation requirement for both single-family and multifamily properties. The Enterprises could work with recipients of NSP funds, such as national nonprofits, local governments or other groups, to purchase these loans.

Rural Markets

The Enterprises are required to develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families in rural areas.

FHFA seeks comments on the following questions:

- What types of transactions and activities should receive consideration towards the duty to serve rural markets and what types of flexibility can the Enterprises add to their underwriting guidelines to assist this market?

NAHB Comments

The Enterprises have had mixed success in the past in purchasing loans for affordable rural rental properties due to the difficulty of identifying lenders willing to participate. More effort needs to be made in cultivating relationships with rural lenders, including state housing finance agencies, and developing appropriate products to facilitate more participation by the Enterprises. Because rural loans tend to be small, more could be done to facilitate aggregating these loans for sale, which would reduce transactions costs and make the loans more attractive to investors.

Investment in LIHTCs is also important for new construction of rural multifamily rental housing. Funding for rental assistance that can be paired with new construction projects is scarce, which requires more equity in these transactions to assure that very-low income households can continue to be served.

NAHB suggests that new construction and acquisition and rehabilitation (preservation) activities should certainly receive consideration towards the duty to serve rural markets. Transactions that are permitted to receive credit towards fulfillment of the Enterprises' affordable housing goals should also be considered towards credit for the duty to serve requirement, assuming the transactions are conducted in "rural areas."

One of the most difficult issues for lenders in rural areas is finding comparable properties for purposes of underwriting and appraisals. NAHB believes that more flexibility is needed when valuing rural properties. For example, underwriting based on the value of the construction components and the rental income stream could be used instead of comparable properties.

Definition of Rural Areas

FHFA points out that currently "rural areas" are defined in connection with the underserved areas affordable housing goal. The definition will expire on January 1, 2010, because HERA replaces the previous housing goals with new housing goals. FHFA offers three options for defining "rural areas," as follows:

<u>Option 1</u>: Define rural areas based on the classifications used by the Census Bureau for the 2000 census which distinguish between urban (urbanized areas, urban clusters) and rural areas. Urbanized areas must have a core with a population density of 1,000 persons per square mile and may contain adjoining territory with at least 500 persons per square mile. Urban clusters have at least 2,500 but less than 50,000 persons. Rural areas are all territories located outside the urbanized areas and urban clusters.

<u>Option 2</u>: Rural areas would be defined as all counties assigned a USDA Rural-Urban Continuum code (RUC). A disadvantage of using the RUC code is that the county-based system could encompass both urban and rural areas.

Option 3: Combine two different designations, one used by the Census and one used by the USDA. All census tracts designated by the Census as "nonmetropolitan" would be considered rural areas, as would all census tracts outside of urbanized areas and urban clusters, as designated by the USDA's Rural-Urban Community Area (RUCA) code. Under this definition, 29 percent of the census tracts in the 50 states would be rural areas and 27 percent of the census tracts regarded as "underserved areas" would be captured.

All three definitions would cover most, but not all, Tribal lands. FHFA requests comments on the following questions:

- Which definition of "rural areas" is most appropriate?
- Should the definition of rural areas include all Tribal lands?

NAHB Comments

Of the three definitions suggested by FHFA, Option 2 seems inappropriate, primarily because it is based on counties, and the problem of large counties containing areas that are both clearly urban and clearly rural is well understood.

Given the confusion and problems that have arisen over the years with the introduction of new and complicated geographic delineations in various housing programs, NAHB tends to be skeptical about new proposed classification schemes, especially if they combine criteria developed by different agencies for different purposes. NAHB therefore tends to favor Option 1 over Option 3, because Option 1 is already well-established and has been developed in a consistent and comprehensive manner by the Census Bureau, and Option 3 in comparison appears to be unnecessarily complicated. NAHB has no problem in general with classifying all territory outside of metropolitan areas as rural. This could be achieved more easily, however, simply by combining nonmetropolitan counties with urban areas inside metropolitan counties, using standard and internally consistent Census definitions.

The Federal Register notice also invites comments on other possible definitions of rural. In this regard, NAHB wonders why FHFA did not at least consider areas defined as rural for the purpose of establishing eligibility for USDA's rural housing programs (http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do). The USDA classification scheme has been established for some time, so the lending community already has considerable experience with it. This USDA scheme further seems appropriate, because it has been developed specifically for the purpose of targeting mortgage lending to areas that are unlikely to be adequately served by institutions and programs with an urban focus.

Sizing the Market

FHFA asks for comments on how to estimate the size of each of the underserved markets and whether there are categories of mortgages that should be excluded from the market size because they are not available for purchase. FHFA suggests that if market size estimation is not possible, performance could be based on the Enterprises' purchases in recent years (but not 2010).

NAHB Comments

To the extent that the market for affordable housing preservation consists of programs administered directly by federal agencies, activity in those programs should be readily obtainable from the respective agencies. Low Income Housing Tax Credits (LIHTCs) and state and local housing programs are administered by state Housing Finance Agencies (HFA), however, and there is at present no centralized method for collecting the relevant information from the HFAs. FHFA therefore needs to establish a method for collecting data from HFAs, or exclude these programs from the definition of the market for affordable housing preservation.

The size of the market for rural loans cannot be established from a conventional source such as Home Mortgage Disclosure Act (HMDA) data, because loans outside of metropolitan areas are excluded from HMDA reporting requirements. However, FHFA itself collects mortgage data through the instrument of its Monthly Interest Rate Survey (MIRS). If sizing the rural market is important, then FHFA should be willing to devote the resources necessary to structure, stratify, and if necessary expand the MIRS so that it is capable of providing annual estimates on the size of the rural market, as defined by FHFA in the duty to serve requirements.

In general, loans should not be excluded from the estimated market size because they are judged to be unavailable for purchase. One reason loans may be held by the original lender is that they have proven difficult to sell in the secondary market. Because the Enterprises thus have some ability to influence the share of loans held in lenders' portfolios, these loans should not be excluded from the universe used to judge the Enterprises' performance.

Using purchases of loans by Enterprises in previous years to estimate market size is not in general advisable. As mentioned in the notice, this method cannot be employed in the first year the evaluation is required, 2010. Because the housing market is currently in an atypical state, with record low rates of activity by most measures, information collected in the near term may provide a poor indication of the activity that could be expected to prevail in more typical years.

Moreover, basing an estimate on purchases by Enterprises in previous years presupposes that the activity in previous years has been adequate. Announcing this as the estimate of choice would further be undesirable, because it would create an incentive for the Enterprises to keep activity low at the beginning of the measurement period in order to establish a target that would be relatively easy to hit in subsequent years.

NAHB appreciates the opportunity to provide comments to FHFA on the Duty to Serve Underserved Markets for Enterprises Advance Notice of Proposed Rule Making. If you have any questions, please contact Claudia Kedda, Director for Multifamily Finance, at ckedda@nahb.com or 202.266.8352. Thank you.

Sincerely,

David L. Ledford
Senior Vice President
Housing Finance and Land Development