September 18, 2009

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

Comments: RIN 2590-AA27 Duty to Serve Underserved Markets for Enterprises

Ladies and Gentlemen:

On behalf of Stewards of Affordable Housing for the Future (SAHF), I appreciate the opportunity to comment on the Federal Housing Finance Agency's Advance Notice of Proposed Rulemaking and Request for Comments published in the *Federal Register* on August 4, 2009. The request seeks comments on ways of improving the performance by Government Sponsored Enterprises (Fannie Mae and Freddie Mac) of their duty to serve underserved markets, as set forth in the Housing and Economic Recovery Act of 2008, for implementation beginning January 1, 2010.

Launched in 2003, SAHF has nine sophisticated not-for-profit members who acquire, own and preserve multifamily rental properties for occupancy by low-income families, seniors, and disabled individuals. SAHF members are committed to long-term, sustainable ownership and the continued affordability of these properties. Together, SAHF members own and operate rental housing -- located in 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands -- providing homes to approximately 90,000 low-income households. SAHF's comments in response to the ANPR draw on the experience of its members, who have decades of experience in developing and managing affordable housing. Their experience indicates that the GSEs have often imposed inflexible underwriting standards and high prices, and have often been unwilling to make any concessions in order to facilitate mortgage financing in affordable housing markets where the most urgent needs exist.

Now more than ever, it is important for the GSEs to be active in creating a liquid mortgage market. Given the economic meltdown which resulted in drying up of many traditional fund sources, the GSEs' Duty to Serve mandate arises at a very timely juncture, when an implementation of more realistic terms, more flexible underwriting, and a wider variety of products will allow the GSEs to meet their legislative mandate and provide a market for serving affordable housing, where currently there is only a very weak market.

SAHF members are primarily concerned with the ready availability of reasonably priced short term and long term credit to facilitate the construction, acquisition, and rehabilitation of affordable housing. As FHFA's request for comments noted (in Question 3a), these properties typically receive some form of federal or state subsidy, such as Section 8 project based or tenant based rental assistance payments, and federal or state loans or grants. However, these forms of assistance meet only a part of the project's financial needs. In virtually all cases, reasonably priced mortgage credit is essential to project feasibility. With that in mind, we have restricted our comments to a few suggestions about changes to GSE products and procedures that would be most helpful to the affordable housing industry, in order to assure a reliable supply of viable financing options for non-profit affordable housing developers.

1. Improve Underwriting Assumptions Relating to Section 8. The receipt of Section 8 Housing Assistance Payments, particularly in the form of project-based contracts, provides strong assurance that a project will have the ability to continue to service its mortgage debt over the long haul, notwithstanding normal market fluctuations that might be affecting unsubsidized properties. However, The GSEs' underwriting standards for these properties have assumed that there is a significant risk of discontinuance of HAP payments before the maturity of the mortgage loan, and have required large transition reserves to be escrowed to cover the anticipated gap. These reserve requirements, which reflect fears that HAP contracts will not be renewed upon expiration, or that Congress will not make the necessary appropriations, have the effect of diverting capital from rehabilitation efforts and other vital project needs. In many cases, these requirements have rendered the preservation transaction infeasible.

The GSEs' discounting of the predictability of Section 8 payments is unjustified, and reflects a more conservative loan underwriting stance than is taken by the Federal Housing Administration. Section 524(a) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) directs the Secretary of Housing and Urban Development to renew expiring HAP contracts upon request of the owner. These renewal contracts can be for terms of up to 20 years. While, under MAHRA, the funding for these long term contracts is subject to annual congressional appropriation, historically Congress has always appropriated the necessary funds, in accordance with its contract renewal mandate to HUD. Any delays in funds availability, such as occurred a few years ago, have been covered by HUD-authorized use of project reserve funds to meet immediate debt service and operating cost requirements, with the reserve funds replenished when the delayed funds arrive.

2. Apply Underwriting Requirements More Flexibly. More generally, the GSEs have a set of underwriting requirements addressing many different aspects of a financing transaction. In the average case, this can be an efficient approach, allowing conventional loan applications to be evaluated quickly, without the need for extensive analysis by GSE staffs. However, affordable housing preservation transactions often come with preexisting conditions or quirks that make them not strictly compliant with one or more of these many underwriting standards.

If the GSE underwriting standards are rigidly applied in a "one-size-fits-all" manner, these preservation transactions will be rejected out of hand for GSE financing. However, the transactions may have other beneficial aspects which should be balanced against the failure to satisfy a particular standard. GSE's should consider the track record of experienced and successful preservation developers and place more reliance on the sponsor's confidence in its project proposals. A more flexible approach toward the application of underwriting standards will be labor-intensive and require detailed attention from GSE analysts, but will be necessary if the GSE's are to meet their statutory obligations to serve underserved markets.

3. Provide Bridge Financing. In addition to satisfying its primary goal of supporting a liquid market for long term residential mortgage financing, the GSE's should also provide products that will bridge the gap between the initial conception of an affordable housing preservation project and the time when the finished property is ready to be placed in service. These could include development loans, acquisition financing, and loans to cover tax credit equity requirements pending completion of the project. For example, Fannie Mae, through its American Communities Fund program, formerly made interest-only loans available to cover the time period between the acquisition of the property by the affordable housing sponsor and the receipt of equity contributions for tax credit investors. Unfortunately, the relatively high interest rates charged in this program limited its usefulness for non-profit sponsors of affordable housing. Reinstitution of this type of program at more manageable interest rates could be an important aid to the affordable housing preservation process.

4. Adjust Pricing to the Realities of the Market. Since the onset of the current troubled economy, the fees and charges imposed by the GSEs in connection with their secondary market function, over and above the basic interest rate, have drastically increased, with the result that GSE financing is beyond the resources of most pending affordable housing transactions. This has occurred even though (in contrast to the troubled single family market) the mortgage default rate on affordable multifamily loans has remained low, and, with cash flow supported by ongoing federal housing subsidies, is likely to remain low in the future. It appears that the GSE price increases reflect a generalized fear of the current market rather than the actual reality of particular types of transactions.

The GSEs' charters specifically instruct them to "provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities). . . . " [Section 301 of the National Housing Act (emphasis added); see also Section 301 of the Federal Home Loan Mortgage Corporation Act]. If the GSEs are to meet their statutory obligation to serve underserved markets, their pricing must reflect the tight cost constraints in which these markets operate.

Thank you for the opportunity to comment on these important issues. Please do not hesitate to contact me at 202-737-5975 or bkelly@sahfnet.org if you have questions.

Sincerely,

/S/

William C. Kelly, Jr.
President, Stewards of Affordable Housing for the Future