FannieMae

September 18, 2009

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

Attention: Public Comment – RIN 2590-AA27
Duty to Serve Underserved Markets for Enterprises
Advance Notice of Proposed Rulemaking and Request for Comment

Dear Mr. Pollard:

Fannie Mae appreciates the opportunity to submit comments in response to the Advance Notice of Proposed Rulemaking and Request for Comment ("ANPR") in connection with the duty to serve underserved markets to be implemented by the Federal Housing Finance Agency ("FHFA"). The duty to serve underserved markets was created by section 1129 of the Housing and Economic Recovery Act of 2009 ("HERA"), and requires Fannie Mae and Freddie Mac (the "GSEs" and each a "GSE") to "provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages for very low-, low-, and moderate-income families" with respect to the manufactured housing market, the affordable housing preservation market, and rural markets.

HERA charged FHFA with creating a new regulatory system to address the duty to serve for the three identified underserved markets. Congress intended this new system to be significantly different from the housing goals that the GSEs must meet in connection with their mortgage purchases. Under the new regulatory system, FHFA will be required to determine whether, and the extent to which, the GSEs are meeting the duty through a variety of their activities. To make this determination, FHFA will consider the development of loan products, outreach to sellers and others, the volume of loans purchased, and investments and grants. As FHFA will need to develop a system quite different from anything else it currently has in place, Fannie Mae offers principles that the company believes are important in developing the proposed rule.

General

In developing the proposed rule, Fannie Mae believes that FHFA should focus on certain broad objectives. The first objective is ease and consistency of applicability. The second objective is flexibility. Third, FHFA should promote the safety and soundness of the GSEs.

Consistency is particularly important with respect to the definitions used in connection with the duty to serve. As much as possible, definitions should be consistent with definitions already commonly in use by the primary market. For example, the definition of a rural area should be one that is recognizable and easily understandable to originators. Having a different definition for the GSEs than is used by the primary market will make coordination between the primary and secondary markets difficult. Similarly, Fannie Mae believes that reporting requirements should leverage existing Fannie Mae data and systems as much as possible. Requiring new data elements from lenders will make data collection more difficult, and implementing a new reporting system will require the expenditure of resources that could otherwise go to benefit the underserved markets.

The variety of activities that can benefit an underserved market suggests that FHFA should implement a flexible rule that takes into consideration the full spectrum of activities that serve the market. While HERA set forth certain specific types of activities that will satisfy a GSE's duty to serve underserved markets, Fannie Mae suggests that the list of activities is illustrative and not prescriptive, and that HERA contemplates that FHFA will provide the GSEs with flexibility to satisfy their duties. In developing the rule, FHFA should evaluate the activities enumerated in HERA, but also assess the full range of activities in which the GSEs engage.

FHFA should promote the safety and soundness of the GSEs in whatever system FHFA develops. Despite its generally broader focus, the Community Reinvestment Act of 1977 ("CRA") provides a model for the duty to serve.[1] Depository institutions must operate in a safe and sound manner even as they help to meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods. FHFA should also ensure that the GSEs operate safely and soundly as they meet the duty to serve underserved markets.

Fannie Mae's comments on each of the three underserved areas, set forth below, reflect the principles that the new regulatory structure should be easy to implement, flexible, and promote the safety and soundness of the GSEs.

Manufactured Housing

Any rule that FHFA proposes to address the manufactured housing market should recognize the inherent differences between manufactured housing that is real property and manufactured housing that is personal property, and the effects these differences have on the risk associated with loans secured by these homes. Moreover, the rule should recognize that manufactured housing communities are inherently different from brick and mortar multifamily properties.

Real Estate and Personal Property Manufactured Housing

Fannie Mae has many years of experience purchasing loans secured by real property manufactured housing, sometimes called "land home" mortgages. A land home manufactured housing mortgage is collateralized by both the dwelling unit and the land to which the unit is affixed. For a land home loan to be eligible for sale to Fannie Mae, both the land and the home

[1] Unlike the CRA, which takes into account all types of lending, the duty to serve is limited to the residential mortgage market. While the CRA ensures that a bank will not neglect the low- and moderate-income neighborhoods in its assessment area, the duty to serve is focused exclusively on very low-, low- and moderate-income families.

must be owned by the borrower, and the home must be permanently affixed to the land. A land home loan must also comply with Fannie Mae titling and appraisal requirements, and the home must meet the federal manufactured home construction and safety standards. These requirements help to ensure that the mortgages purchased are a safe and sound investment.

Fannie Mae does not currently purchase loans secured by manufactured housing that is classified as personal property pursuant to applicable law. These loans are secured solely by the dwelling unit, and they involve more risk for a lender than land home loans. Among the reasons for this are that the home tends to decrease in value over time, it can be removed and thus may not be available to offset losses if the borrower defaults, and obtaining title to the home after default may be more difficult. Moreover, federal and state laws treat personal property manufactured housing loans in ways that are less favorable to lenders than the way they treat land home loans. This situation creates difficulties in establishing appropriate credit parameters, and has made this market risky for investors.

Additionally, Fannie Mae believes that an important component of safety and soundness is homeownership sustainability. It is generally recognized that the current foreclosure crisis resulted from the widespread use of unsuitable mortgage products such as high cost loans, loans with negative amortization, and loans with other unsustainable features. Markets that have extremely high default rates not only create risk for Fannie Mae as an investor, but also negatively impact nearby families, neighborhoods, and local governments.[2] Because lending on some types of manufactured homes has a history of high default rates, Fannie Mae believes that FHFA should ensure that the GSEs' participation in these markets conforms to standards and requirements that would benefit borrowers and preserve homeownership.[3]

Manufactured Housing Communities

Fannie Mae is currently the primary source of liquidity for loans secured by manufactured housing communities. Fannie Mae began to enter this market in 2000, and in 2008 purchased a billion dollars of mortgages secured by these communities. At mid-year 2009, Fannie Mae had already purchased $740 million in mortgages on manufactured housing communities.[4]

---

[2] For example, other families see the value of their properties decline; neighborhoods face increasing crime, which also drives down property values; and local governments must provide more services with fewer resources. *See* Kingsley, Smith and Price, "The Impacts of Foreclosures on Families and Communities," (May 2009) (report prepared by the Urban Institute for The Open Society Institute).

[3] U.S. General Accounting Office, "Federal Housing Administration: Agency Should Asses the Effects of Proposed Changes to Manufactured Home Loan Program," No. GAO-07-879 (Aug. 2007). The report states that the researchers "considered the experience of FHA's Title I program [which insures personal property manufactured home loans] since 1990 and of non-FHA personal property manufactured housing loans" and found that "while the number of [Federal Housing Administration] loans originated dropped significantly from the early to mid-1990s, cumulative defaults expressed as a percentage of originated loans did not fall below 10 percent from 1990 to 2002 and have exceeded 25 percent in 8 of the 13 years. . . . In terms of non-FHA loan performance, cumulative losses typically have been above 15 percent for loans originated between 1997 and 2001."

[4] News Release, "Fannie Mae and its DUS® Lenders Provide Much-Needed Liquidity to Support Multifamily Rental Housing, Fannie Mae invests $10.1 billion in the multifamily market, Remains a constant source of liquidity" (July 20, 2009).

While this has been a growing area for Fannie Mae, the company has imposed restrictions to increase the likelihood that that the communities will be successful and that the mortgage purchases are safe and sound. For example, to qualify for purchase by Fannie Mae, a loan on a manufactured housing community must be secured primarily by the land and infrastructure supporting the community, any common amenities for the community, and any individual manufactured homes belonging to the community owner and offered for rental. In addition, occupancy in the community must be stabilized, and homes in the community must conform to the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974.[5] Because of the inherent differences between manufactured housing communities and other multifamily properties, Fannie Mae will also frequently evaluate economic conditions in an area, including employment and economic development, to determine whether a community is viable and therefore is sufficient collateral. Fannie Mae's standards and practices have had positive results, and Fannie Mae is exploring the possibility of using this model for limited equity cooperative communities as well.

Fannie Mae underwriting guidelines and practices for manufactured housing have allowed the company to build this business in a responsible manner and consistent with national construction safety standards, both of which are advantageous to homeowners. When developing the proposed rule, Fannie Mae requests that FHFA take into consideration practices currently in place that promote safety and soundness and benefit homeowners.

Affordable Housing Preservation

Preservation can take a number of forms. First, Fannie Mae encourages FHFA to recognize that the list of products set forth in HERA was intended to be illustrative of the variety of programs that are available to preserve affordable housing, and that at different times, different programs are likely to have a more significant impact. Fannie Mae also encourages FHFA to take into consideration community development assistance, which makes possible the preservation of housing in affordable areas. Programs that preserve communities by addressing infrastructure needs are as important as programs directly addressing housing preservation. Moreover, programs that address foreclosure prevention and property disposition are important factors in retaining affordable housing.

In particular, Fannie Mae strongly recommends that efforts related to the Making Home Affordable Program, as well as other refinance and loss mitigation efforts that aim to keep families in their homes, be recognized as contributing to the duty to serve affordable housing preservation. Fannie Mae has programs that: lower a borrower's monthly payments without increasing the debt outstanding; put borrowers into more stable loan products; and provide underwriting flexibilities for high loan-to-value mortgages. These programs align with Congress' goal of preserving home affordability.

In addition, Fannie Mae believes that all modification programs, including forbearance, Home Saver Advance, and repayment programs, as well as foreclosure prevention outreach, should be encouraged and rewarded under the duty to serve affordable housing preservation because they create opportunities for families that are trying to avoid losing their homes.

---

[5] 42 U.S.C. § 5401 *et seq.*

Fannie Mae notes that collecting data on and tracking the efficacy of housing preservation programs is a function that is not well developed at this time.[6] Fannie Mae is exploring opportunities to work with state and federal agencies that are developing databases and tracking systems. It will be difficult to effectively measure the GSEs performance under the duty to serve affordable housing preservation until such systems are operational. Fannie Mae requests that the company's efforts to develop these systems be viewed by FHFA as a means for meeting the duty to serve this market.

Rural Markets

Developing an appropriate definition of "rural" is crucial to effectively meeting the needs of families in rural areas. It will also be necessary to develop a definition that is clear to lenders and consistent with other programs under which lenders are originating mortgages in rural areas.

The definitions proposed by the ANPR are based on 2000 census data, and updated information will not be available for several years. Moreover, these definitions result in some very different outcomes, which can be expected to have a concrete impact on the communities affected by the definition. Based on the Rural Continuum Code, 21% of American counties, with 1.86% of the nation's population, fit the definition of rural.[7] Alternatively, 21% of the population lives outside of urbanized areas and urban clusters and would fit one of FHFA's proposed definitions of rural.[8]

Lack of liquidity and prevalence of substandard housing are particular problems for rural areas. In determining the definition of rural areas, FHFA should take into account the purpose behind this congressional mandate, and ensure that the duty will address the appropriate problems. Where existing federal and state programs are in place to address these problems, Fannie Mae can partner with lenders to bring additional resources to areas in need. For that reason, Fannie Mae encourages FHFA to closely align the definition of rural with that of other federal programs that are focused on serving rural areas, such as the U.S. Department of Agriculture's rural housing programs.

As a technical matter, Fannie Mae anticipates that, as with underserved areas currently, FHFA will provide a file of the geographic areas that meet the definition. Fannie Mae will work with FHFA to ensure that the file is consistent with the data collected by lenders.

Evaluation

HERA requires FHFA to separately evaluate the GSEs' performance in each of the underserved areas. As set forth in HERA, in determining how to evaluate each GSE's performance, FHFA may not set quantitative targets for loan purchases.[9] FHFA will consider a wide range of

---

[6] There are several sources of data currently available on preservation, but these sources are limited in scope and do not provide sufficient information across types of programs and geographic areas that will be needed to evaluate performance under the duty to serve the affordable housing preservation market.
[7] USDA, "Measuring Rurality: Rural-Urban Continuum Codes" (http://www.ers.usda.gov/briefing/rurality/RuralUrbCon/).
[8] USDA, "Measuring Rurality: What is Rural?" (http://www.ers.usda.gov/Briefing/Rurality/WhatisRural/).
[9] 12 U.S.C. § 4565(d)(2)(C).

activities that include loan purchases, grants and outreach activities, the development of new products, and other activities. Fannie Mae suggests that it is not necessary to develop rigid tests as contemplated by the ANPR. Products, loan purchases, outreach activities, and grants must all be taken into consideration, but establishing a series of tests puts unnecessary emphasis on the method of evaluation.

Fannie Mae believes that the wide array of activities that satisfy the duty to serve underserved markets provides a great deal of flexibility for the GSEs to examine the needs of the various markets and take targeted steps to meet those needs. Specifically, higher levels of loan purchases may be needed in some areas where liquidity is particularly constrained. However, other areas may need loans and grants for infrastructure before housing development can be viable. In still other areas, homebuyer education and counseling may be needed to prepare families for homeownership or to help families in trouble to stay in their homes.

Fannie Mae recognizes that the breadth of the duty to serve underserved markets makes a quantitative evaluation process difficult to develop, and perhaps undesirable. FHFA should have sufficient flexibility in the evaluation process to recognize the value that individual activities bring to each underserved market. FHFA should also have the discretion to value appropriately research and development activities that are not capable of showing results in their initial phases, but which are necessary for long term planning and development.

Should FHFA establish the tests as proposed in the ANPR, Fannie Mae agrees with the statement in the ANPR that the four proposed tests need not be given equal weight in the evaluation process. In some cases, it may be appropriate to weight more heavily activities that have an immediate and tangible beneficial impact. FHFA should however, also consider that different tests deserve different weights because of the long-term impact they have on the community, and not just the short term results. Fannie Mae recommends that the evaluation process not incent the GSEs to develop products, purchase mortgages, or engage in other activities that would award points, or apply some other quantitative measure, that would encourage the GSEs to engage in behavior that does not provide real value to the markets to be served.

Reporting

FHFA must report annually to Congress on the performance of the GSEs in meeting the duty to serve the specified underserved markets. The report must include an evaluation of each GSE and the rating given to each GSE. To assist FHFA in preparing its evaluation and report, the GSEs will be required to report annually to FHFA on their activities related to the underserved markets.

Fannie Mae agrees that the CRA provides an appropriate model for evaluating the GSEs' performance under the duty to serve underserved markets. Fannie Mae notes, however, that these evaluations take place only every three to five years for most institutions. The ANPR suggests that the GSEs will be required to annually submit narrative language and a complete listing of transactions for which the GSEs desire to receive credit toward meeting the duty. As described in the ANPR, the preparation and reporting requirements that the GSEs will have to meet will require the expenditure of significantly more resources than what is required under the CRA.

Fannie Mae notes that it will be necessary to develop new methods of collecting and reporting data that go beyond processes that Fannie Mae currently has in place. Moreover, Fannie Mae will be able to take only limited steps toward initiating the new collection and reporting processes before the final rule is issued. Accordingly, Fannie Mae requests that FHFA develop requirements for reporting that recognize the time and effort that will be necessary to develop these new systems, and allow the GSEs, as much as possible, to leverage existing technology systems and processes.

Fannie Mae notes, in particular, that different data will need to be collected for single-family housing, multifamily housing, grants, outreach activities, research and development, volunteer assistance, and the tracking of new products and underwriting flexibilities that benefit underserved markets. All this information will be available to FHFA through the supervisory activities of the FHFA examiners. Fannie Mae encourages FHFA to consider processes already in place to evaluate the GSEs' performance, and rely as much as possible on existing processes and systems, rather than requiring the expenditure of company resources to create new systems.

Certification

Fannie Mae suggests that a certification requirement for the annual reporting is unnecessary and inefficient. Certification is not required by HERA, but complete and truthful submissions to the agency are nevertheless required by 18 U.S.C. § 1001. Neither the CRA regulations nor the examination procedures applicable to national banks require certifications. Rather, bank examiners review the public file and analyze the activities of the entity to assess whether a bank has met its CRA requirement.

Fannie Mae must certify certain types of filings, but as a result, it has created due diligence processes to provide the certifying officer with confidence that the submission meets applicable requirements. Fannie Mae would need to put the same process in place to address the new reporting requirements. During the conservatorship, however, FHFA examiners are deeply involved in all aspects of the company's business. Fannie Mae submits that the certification requirement is not necessary, and will require a substantial expenditure of company resources that could be put to better use servicing the needs of the underserved markets.

Other Issues

The ANPR asked whether there are categories of mortgages for which the GSEs receive housing goals credit that should not be considered as satisfying the duty to serve underserved markets. Fannie Mae believes that excluding certain categories of mortgages would not provide a benefit to underserved markets but could cause confusion for originators.

Fannie Mae already prohibits delivery of the types of mortgages that FHFA would likely exclude, including Home Ownership Equity Protection Act mortgages and mortgages that do not meet the interagency statements on subprime mortgages and nontraditional mortgages. Sellers are required to represent and warrant to Fannie Mae that their loans meet all Fannie Mae requirements. Prohibiting these mortgages from contributing to the duty to serve underserved markets would not benefit homeowners because restrictions on these types of mortgages already exist.

Moreover, the housing goals address only one aspect of Fannie Mae's business in that they measure only mortgage purchases and other transactions that are substantially similar to mortgage purchases. In reaching out to underserved markets, HERA contemplated that the GSEs would conduct a much broader range of activities than mortgage purchases. Fannie Mae believes that the proposed rule should address the broad spectrum of activities that the GSEs can engage in to meet existing needs, rather than focusing on narrow categories of mortgages to exclude.

* * *

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) 274-8660.

Sincerely,

Jeffery R. Hayward
Senior Vice President - Community
Lending and Development