



We make home possible<sup>SM</sup>

**Robert E. Bostrom**  
Executive Vice President,  
General Counsel & Corporate Secretary

Tel: (703) 903-2690  
Fax: (703) 903-2623  
robert\_bostrom@freddiemac.com

8200 Jones Branch Drive  
MS 200  
McLean, VA 22102-3110

*Via Electronic Submission*

September 18, 2009

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

Attention: Comments — RIN 2590-AA27 (Duty to Serve Underserved Markets)

Dear Mr. Pollard:

Freddie Mac is pleased to submit our comments on the Federal Housing Finance Agency's advance notice of proposed rulemaking and request for comment regarding the new duty to serve underserved markets. We commend FHFA for its thoughtful consideration of the issues relating to the implementation of this statutory duty.

Freddie Mac is committed to strengthening the underserved markets identified by Congress, as well as the housing system for America's families. We will continue to work toward our shared objective of improving sustainable homeownership and affordable rental opportunities across the country.

Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob", with a long horizontal flourish extending to the right.

Robert E. Bostrom

Attachment



We make home possible®

**COMMENTS OF THE FEDERAL HOME LOAN MORTGAGE CORPORATION**

**ON**

**THE FEDERAL HOUSING FINANCE AGENCY'S  
ADVANCE NOTICE OF PROPOSED RULEMAKING AND REQUEST FOR COMMENT  
ON THE DUTY TO SERVE UNDERSERVED MARKETS**

**SEPTEMBER 18, 2009**

## INTRODUCTION

The Federal Home Loan Mortgage Corporation (Freddie Mac) is pleased to submit these comments on the Federal Housing Finance Agency's (FHFA) advance notice of proposed rulemaking and request for comment (ANPR) on the duty to serve underserved markets.<sup>1</sup> Freddie Mac embraces the new duty to serve and looks forward to assisting FHFA in developing an appropriate regulatory framework that will effectively serve the markets identified by Congress. We applaud FHFA for its thorough and careful consideration of the numerous aspects of this rulemaking.

Congress enacted the new duty to serve provisions of the Housing and Economic Recovery Act of 2008 (HERA) in July 2008.<sup>2</sup> The mortgage finance and macroeconomic landscape has experienced a seismic shift since that time. The credit crisis and market dislocations that began in 2007 expanded and deteriorated further in 2008 and into 2009. Credit contraction in the single-family mortgage market has been widespread. Foreclosure and delinquency rates are at unprecedented levels.<sup>3</sup> The multifamily residential market, too, has experienced its share of challenges. Credit for multifamily mortgages has tightened substantially, and the commercial mortgage-backed securities (CMBS) market is at a virtual standstill.

Policymakers could not have foreseen at the time of HERA's enactment the depth and scope of the current housing and financial crisis, as well as the placement of the Enterprises into conservatorship. We believe that the far-reaching mortgage and financial crisis — and the lessons learned therefrom — should necessarily shape FHFA's implementation of HERA's duty to serve provisions.

Two developments, in particular, ought to guide the regulatory contours and implementation of the duty to serve. First, the credit crisis has left private mortgage insurers severely capital-constrained, making mortgage insurance in many underserved areas and underserved market segments either extremely scarce and expensive or entirely unavailable. As FHFA is aware, Freddie Mac may not purchase a single-family conventional mortgage with a loan-to-value (LTV) ratio over 80 percent at the time of its purchase unless mortgage insurance or another

---

<sup>1</sup> 74 Fed. Reg. 38,572 (Aug. 4, 2009).

<sup>2</sup> Prior versions of the duty to serve provisions were introduced several years earlier. *See, e.g.*, Report from the House Committee on Financial Services, "Federal Housing Finance Reform Act of 2005" accompanying H.R. 1461 (which passed the U.S. House of Representatives on Oct. 26, 2005) (H.R. Rep. No. 109-171, pt. 1 (2005)); Report from the House Committee on Financial Services, "Federal Housing Finance Reform Act of 2007" accompanying H.R. 1427 (which passed the U.S. House of Representatives on May 22, 2007) (H.R. Rep. No. 110-142 (2007)).

<sup>3</sup> *See, e.g.*, Press Release, Mortgage Bankers Ass'n, "Delinquencies Continue to Climb, Foreclosures Flat in Latest MBA National Delinquency Survey" (Aug. 20, 2009) (combined percentage of loans in foreclosure or delinquency is the highest ever recorded in MBA delinquency survey); Press Release, RealtyTrac, "U.S. Foreclosure Activity Increases 7 Percent In July" (Aug. 13, 2009) (foreclosure activity set new record for third time in five months).

statutorily-specified credit enhancement is in place at the time of purchase. The scarcity and increased cost of mortgage insurance (the predominant form of credit enhancement) may severely limit the “market opportunities available” to the Enterprises regarding such loans in the manufactured housing and rural areas market segments. FHFA’s regulations for 2010 and following years should consider and reflect this development.

Second, the scope of the mortgage market crisis and the fundamental public mission of the Enterprises to meet that crisis have created an unprecedented opportunity for the Enterprises to serve the Nation through the Making Home Affordable (MHA) programs. The MHA programs and outgrowths of those initiatives have been and will continue to be — for the foreseeable future — a primary focus of the Enterprises’ “duty to serve” in the broadest possible sense of their statutory mission and purpose. We believe these MHA efforts, which FHFA strongly supports, should receive credit toward the Section 1335 duty to serve in 2010 and thereafter under the duty to serve affordable housing preservation generally, and the other market segments where more specifically applicable. Furthermore, because service to the MHA programs is an overarching priority, and Enterprise human and technical resources are necessarily limited, the scope of the market-specific Section 1335 duty must necessarily reflect those limitations.

Our comments below are organized as follows.

**Section I** provides an overview of the statutory and legal framework that governs the duty to serve underserved markets. We highlight the statute’s special emphasis on innovation and the qualitative nature of the assessment criteria under the statutory duty.

**Section II** sets forth a number of key principles that we believe should guide FHFA’s rulemaking under the duty. We also recommend that FHFA, in its regulations, designate 2010 as a transition year to provide FHFA with the opportunity to assess more completely the obstacles and challenges that exist in the underserved markets and to allow the Enterprises to prepare for broader implementation.

**Section III** discusses the three statutorily-identified underserved markets. After a brief overview of each segment, we discuss Freddie Mac’s existing efforts in these underserved markets, and our views on how we might enhance our service to each market.

**Section IV** discusses the performance evaluation criteria that HERA directed FHFA to establish. We discuss the importance of FHFA’s advance communications of its weightings and expectations, offer specific recommendations on the mechanics of the evaluation process, and provide our comments on the four statutory considerations.

Finally, **Section V** provides several recommendations concerning the reporting process on the Enterprises’ performance under the duty to serve.

## I. STATUTORY OVERVIEW

Congress chartered Freddie Mac, among other things, “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) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing . . . .”<sup>4</sup> Likewise, Congress in 1992 found that the Enterprises “have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return.”<sup>5</sup>

HERA amended the 1992 FHEFSSA statute by modifying the affordable housing goals regime and establishing two additional components to the Enterprises’ affordable housing mission: The duty to serve underserved markets and the allocation requirement for the affordable housing trust fund. The purpose of the affordable housing goals was, and continues to be, to ensure that the Enterprises facilitate the financing of affordable housing for low- and moderate-income and other targeted segments of the mortgage market. The new affordable housing trust fund allocations are intended largely to help increase and preserve the supply of housing for extremely low and very low-income families.

The new duty to serve underserved markets is designed to encourage the Enterprises to focus on innovative approaches to facilitating the financing of mortgages for very low-, low- and moderate-income families with regard to three underserved markets: manufactured housing, affordable housing preservation and rural markets. The general “duty to serve” language in Section 1335(a)(1), and the duty as applied to each of the three market segments in Section 1335(a)(1)(A)-(C), focus on “*develop[ing]* loan products and flexible underwriting guidelines to facilitate a secondary market.”<sup>6</sup>

To implement the duty to serve provisions, FHFA, “by regulation, [is to] establish effective for 2010 and thereafter a manner for evaluating whether, and the extent to which, the Enterprises have complied with the duty . . . and for rating the extent of such compliance.”<sup>7</sup> Using this method, FHFA will, “for 2010 and each year thereafter, evaluate such compliance and rate the performance of each enterprise as to extent of compliance.”<sup>8</sup> That HERA does not permit FHFA to evaluate an Enterprise’s performance solely on a quantitative basis underscores the distinct purpose of the duty to serve, in contrast to the affordable housing goals. Such evaluation will

---

<sup>4</sup> Freddie Mac Act § 301(b)(3), 12 U.S.C. § 1451(b)(3) (Note) (as amended by section 1382(a)(3) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), 12 U.S.C. § 4501 et seq.).

<sup>5</sup> FHEFSSA § 1302(7), 12 U.S.C. § 4501(7).

<sup>6</sup> FHEFSSA § 1335(a)(1)(A)-(C), 12 U.S.C. § 4565(a)(1)(A)-(C), as amended by HERA (emphasis added).

<sup>7</sup> FHEFSSA § 1335(d)(1), 12 U.S.C. § 4565(d)(1), as amended by HERA.

<sup>8</sup> *Id.*

instead entail a largely *qualitative* assessment framework.<sup>9</sup> As noted, the statutory language expresses Congress' view that innovative approaches to providing mortgage financing and market leadership are the focus of the duty to serve. These efforts, in turn, are designed to advance the overarching policy objectives of the duty to serve: "To increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets."<sup>10</sup>

## II. GENERAL RECOMMENDATIONS

### A. Guiding Principles

In light of the complexity and novel aspects of the duty to serve, we recommend that FHFA adopt a number of principles to guide its rulemaking process.

These principles, a number of which FHFA has already incorporated in its ANPR, are as follows:

- The duty to serve regulations should be flexible in their approach — allowing the Enterprises to satisfy the duty in a variety of ways. Evaluation criteria should consist of factors for consideration, rather than rigid or mechanistically-applied requirements. Compliance evaluation in any given year should take into account current market dynamics, overall macroeconomic conditions, other demands on Enterprise resources, and other exogenous factors affecting the Enterprises' capacity to serve these market segments. We believe that a ratings scheme in which receipt of a certain number of points automatically results in a particular rating would be inconsistent with the requisite flexibility.<sup>11</sup>
- The regulations should reflect FHFA's consideration of both the distinct policy purposes underlying, as well as the cumulative impact of, the duty to serve, the affordable housing goals and the possible contributions to the affordable housing trust fund. FHFA should consider the resource and capacity constraints of each Enterprise in supporting all aspects of its affordable housing mission.
- The regulations should expressly support responsible and sustainable lending. The lessons learned from the current mortgage crisis should be considered in the implementation of this new statutory duty. The duty should encourage Enterprise initiatives that support long-term, sustainable liquidity improvements in the identified

---

<sup>9</sup> The legislative history to a predecessor bill to the housing finance provisions of HERA also supports this view: "it is not intended that the Director [of FHFA] would create percent-of-business or other numeric goals under this section." Report of the House Committee on Financial Services, "Federal Housing Finance Reform Act of 2007" accompanying H.R. 1427, dated May 9, 2007 (H.R. Rep. No. 110-142, at 135 (2007)).

<sup>10</sup> FHEFSSA § 1335(a)(1), 12 U.S.C. § 4565(a)(1), as amended by HERA.

<sup>11</sup> See 74 Fed. Reg. at 38,576.

underserved markets. The development of flexible underwriting guidelines, in particular, does not mean that underwriting standards should be relaxed in ways that fail to incorporate the full range of responsible lending considerations.

- Closely related to the foregoing, the regulations should take into account the safety and soundness of the Enterprise, consistent with FHEFSSA. The regulations should re-emphasize that duty to serve activities should be undertaken in a safe and sound manner. The regulations should refrain from setting standards or expectations that would inappropriately increase the credit, market, operational or other risks of the Enterprises.
- The regulations should reflect the express policy objectives of the duty to serve — to “increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing.”<sup>12</sup> In particular, the regulations should encourage Enterprise activities that, over time, increase private market participation and investment in the underserved market, rather than reliance on public and/or Enterprise subsidies.
- The regulations should recognize the limitations inherent to the Enterprises’ role as secondary mortgage market participants. The Enterprises are designed to create the conditions for a more liquid, stable and transparent primary market, but cannot, by themselves, re-make these markets, given that they are not primary market lenders.

## **B. 2010 As Transition Year**

Understanding the nature of and the challenges facing the underserved markets identified by Congress is critical to the rulemaking process. We believe that FHFA and the Enterprises will need time to examine and understand fully (i) the difficulties and challenges that currently exist in manufactured housing, affordable housing preservation and rural areas; and (ii) the ability of the Enterprises to address each specific difficulty or challenge identified.

Accordingly, we recommend that FHFA designate 2010 as a transition year for the duty to serve. While Freddie Mac is already in the process of exploring strategies to meet the duty to serve, the transition year approach would focus the Enterprises on laying the groundwork for a more comprehensive approach to the unique challenges that these underserved markets present. Enhancing market research, strengthening relationships with lenders and other key market participants, developing market strategies, and performing technical assessments — all would be Freddie Mac’s focus in 2010. Such efforts that lay the foundation for developing initiatives should receive special consideration on whether the duty to serve was met in 2010.

---

<sup>12</sup> FHEFSSA § 1335(a)(1), 12 U.S.C. § 4565(a)(1), as amended by HERA.

Finally, a transition year would provide FHFA the opportunity to determine the special considerations that duty to serve-related initiatives should receive under FHFA's Prior Approval for Enterprise Products rule,<sup>13</sup> as well as to update the duty to serve rules as necessary after FHFA and the Enterprises gain experience with this new statutory mandate.

### III. DISCUSSION OF THE THREE UNDERSERVED MARKETS

#### A. Manufactured Housing

##### *Overview of Market and Freddie Mac Support*

Manufactured housing is an important source of affordable housing for very low-, low- and moderate-income families. The relative affordability of manufactured homes primarily derives from efficiencies achieved during production in a controlled factory environment, including the economies of scale resulting from standardized assembly processes, materials and designs.<sup>14</sup> Generally, new manufactured homes are placed on purchaser-owned land or manufactured housing communities (where the purchaser leases the land). Estimates suggest that about 66 percent of manufactured homes are placed on private property, while the remaining 34 percent are sited in residential land-lease manufactured housing communities.<sup>15</sup> Manufactured home loans can be secured by the land and the structure (land home loans) or the structure alone (personal property or "chattel" loans). Manufactured housing communities or parks that provide land-lease home sites are financed separately.

Freddie Mac has provided considerable support to the manufactured housing market through our mortgage purchase activities. From 2000 to July 2009, Freddie Mac purchased \$14.6 billion in manufactured home mortgages. These loans were sourced from nearly 1,000 lenders, representing a wide range of institutions from large national lenders to small community banks. Freddie Mac currently provides a manufactured home mortgage product through its Single Family Seller/Servicer Guide. This offering is broadly available to all Freddie Mac-approved Seller/Servicers, permits a maximum LTV of 95 percent and allows many of the same flexibilities offered for traditional "site built" home loans. The standards governing the origination, sale, delivery and pooling of these manufactured home mortgages is generally consistent with Freddie Mac processes used for other real property types and mortgage products. For the reasons discussed below, personal property (chattel) loans are currently not eligible for sale to Freddie Mac.

---

<sup>13</sup> 74 Fed. Reg. 31602 (July 2, 2009).

<sup>14</sup> The National Manufactured Housing Construction and Safety Standards Act of 1974 — commonly referred to as the "HUD code" — governs the production of manufactured housing units. Constructed units are inspected by HUD-certified inspectors and, if satisfactory, are transported to a retail center (a dealer) and sold to consumers.

<sup>15</sup> *Understanding Today's Manufactured Housing*, Manufactured Housing Institute (citing 2005 *Manufactured Homes: The Market Facts*, Foremost Insurance Company).

Freddie Mac has provided significant support to manufactured home communities as well. Through investment in CMBS backed by multifamily and manufactured housing park mortgages, Freddie Mac helped finance hundreds of thousands of homes sites in manufactured housing communities.

### *Freddie Mac's Experience with Manufactured Housing Mortgages*

Freddie Mac regularly reviews our credit and underwriting policies for manufactured housing mortgages. Revisions to Freddie Mac's guidelines in 2004 and our experience since that time are particularly instructive. Prior to those guidelines, Freddie Mac — and other participants in the manufactured housing mortgage industry — experienced deteriorating loan performance with excessive default and foreclosure levels. The performance of Freddie Mac's manufactured housing mortgage portfolio has improved markedly since then. Because of our credit and underwriting reforms, our more recent manufactured housing mortgage purchases show improved performance, with delinquency levels that are becoming closer to that for site-built housing mortgages. These recent performance figures are encouraging, as they support the prudence of our 2004 reforms specifically and our efforts to advance sustainable homeownership generally. At the same time, our manufactured home mortgage offering maintained a low five percent down payment requirement along with other flexibilities that continued to enable low- and moderate-income borrowers to qualify for a mortgage, as well as benefit from the affordable cost of manufactured homes.

Our experience with manufactured housing mortgages underscores the substantial differences that exist between the credit and underwriting guidelines that govern the financing of site-built homes compared to those generally applicable to manufactured homes. Valuation and appraisal methods, for example, vary substantially. Documentation standards for income and down payment verification differ as well.

Chattel mortgages impose additional layers of complexity and risk. As a report by the Neighborhood Reinvestment Corporation and the Harvard Joint Center for Housing Studies observes: "In virtually all cases it is, in fact, land ownership that drives what is commonly thought of as 'house price appreciation.'"<sup>16</sup> The absence of land ownership limits the asset-building opportunity for home owners.<sup>17</sup> To the Enterprises, loans that are not secured by land present substantially more risk compared to land-owned homes. Valuing the collateral becomes a greater challenge. Loan performance forecasting and pricing would require extensive research, analysis, and revisions to account for the additional risk of lending on loans

---

<sup>16</sup> Neighborhood Reinvestment Corp. in collaboration with the Joint Ctr. for Housing Studies of Harvard Univ., *An Examination of Manufactured Housing as a Community- and Asset-Building Strategy, Report to the Ford Foundation* (Sept. 2002), p. 8. The Report also observes: "With land appreciation representing the major factor behind increasing home value, these studies point out the importance of expanding the potential for lower-income household to purchase manufactured homes and place them on land that they own." *Id.*

<sup>17</sup> *Id.*

not secured by real estate. Importantly, in addition to the need for mortgage insurance (or other permissible credit enhancement) for mortgages with LTVs above 80 percent, the purchase of chattel loans also might require additional forms of credit enhancement to offset credit or collateral risks inherent in the non-real estate collateral. The availability of these additional forms of credit enhancement from chattel originators is uncertain. Indeed, absent the availability of such credit enhancement, the purchase of chattel loans would be a difficult proposition for Freddie Mac.

With respect to underwriting and responsible lending, we believe the governing principle is the borrower's ability to successfully repay the mortgage obligation. We believe that the current standards applicable to our manufactured housing offering promote sustainable, responsible lending that enables borrowers to repay their mortgage obligations. Pursuant to the duty to serve, we will continue to explore initiatives that would be consistent with this principle. At the same time, credit and underwriting practices that diverge from Freddie Mac's standards, we submit, should require review as well.

Freddie Mac also will explore avenues through which we can innovate to bring greater standardization, efficiencies and transparency to the manufactured housing market. Efforts are already underway. Freddie Mac has initiated outreach efforts to manufactured housing finance companies and other key industry participants to ascertain both industry needs and obstacles to a more liquid and efficient market within the industry itself. These efforts go to the core of the duty to serve: "To increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets."<sup>18</sup>

Finally, we believe that efforts to facilitate the financing of manufactured home communities, whether resident or investor-owned, is an effective means of providing support to manufactured housing. Manufactured home parks provide an affordable alternative for borrowers, particularly for those who do not own or are not able to afford land. We urge that Enterprise activities to finance manufactured housing communities be eligible for credit under the duty to serve within all applicable underserved markets.

## **B. Affordable Housing Preservation**

The duty to serve requires the Enterprises 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 various government programs. We agree with FHFA that the enumerated housing programs "are not exhaustive, and the Enterprises are not limited to assisting these programs as their sole means of fulfilling their duty to serve the affordable housing preservation market,"<sup>19</sup> and that "compliance with the duty to assist with affordable housing preservation is not dependent on

---

<sup>18</sup> FHEFSSA § 1335(a)(1), 12 U.S.C. § 4565(a)(1), as amended by HERA.

<sup>19</sup> 74 Fed. Reg. 38,574.

whether the Enterprise assists each enumerated program each year.”<sup>20</sup> As FHFA observed, some of the housing programs listed are outside of the Enterprises’ traditional roles and core competencies.

Freddie Mac has a well-established program that focuses on targeted affordable multifamily financing — both cash mortgages and credit enhancement of multifamily bonds — for properties that qualify under various public subsidy programs.

Accordingly, Freddie Mac’s approach to the affordable housing preservation market would be to leverage our strengths, potentially expanding existing Freddie Mac activities, and establishing new initiatives that will allow us to focus on activities where we can enhance our impact and move to implementation. The activities that align most closely with Freddie Mac’s strengths and its role as a secondary mortgage market institution include the following:

**Section 8.** Section 8 is the dominant federal housing assistance program today. This rental assistance program, which has its origins in the Housing Act of 1937, allows very low-income households to pay approximately 30 percent of their income for rent, with the remainder coming from federal sources. Section 8 households live in privately-owned rental housing and benefit from either project-based or tenant-based vouchers.

Freddie Mac has extensive experience with the Section 8 program and specifically identifies Section 8 projects in its multifamily targeted affordable program. Many of the projects that we have historically financed contain Section 8 subsidies. We currently have a substantial active portfolio of Section 8-related business and believe that we provide strong support to this space. As part of our commitment to affordable housing preservation, Freddie Mac will explore various avenues through which we can continue to serve this market. Because Section 8 subsidies are used in other government housing programs, our continued efforts here will enhance and support other affordable preservation programs as well.

**Section 236.** Under Section 236 of the National Housing Act, the U.S. Department of Housing and Urban Development (HUD) provides an interest reduction payment (IRP) that reduces the effective mortgage interest rate paid by the borrower to 1 percent. HUD issued guidance to permit the continuation of the IRP subsidy when the project secures new financing. Under the “decoupling option,” when the Section 236 mortgage is refinanced, the interest rate assistance is severed from the retired Section 236 loan and applied to the new financing. Freddie Mac offers strong support through a targeted affordable loan program for such Section 236 projects. Freddie Mac will explore additional ways to support this program.

**Section 42.** Under the Section 42 Low-income Housing Tax Credit (LIHTC) program, businesses can invest equity into affordable housing projects in exchange for tax credits that can be used to offset their tax liability. The projects must stay affordable for at least 15 years, but

---

<sup>20</sup> *Id.*

typically longer. In its first 20 years, the program was extremely productive, creating thousands of units of affordable housing. With the recent stress in the financial markets, the LIHTC program has experienced a severe contraction, as active investors in equity pulled out of the market.

Freddie Mac has significant experience with financing properties that benefit from LIHTC equity. In fact, the majority of the debt transactions completed by Freddie Mac's Multifamily targeted affordable group involve low-income housing tax credits, either "9% credits" (cash mortgages) or "4% credits" (bond transactions). In the face of declining equity available for affordable housing projects, we have begun exploring alternative structures to revitalize this segment of the affordable housing market. We look forward to continuing this work.

*State and Local Programs.* While state and local affordable housing preservation programs are too numerous and diverse to describe here, they often mirror or replicate the Section 8 rental subsidy or other federal programs. In addition to existing programs, states and localities are leveraging the opportunities made available by recently-enacted Federal stimulus programs. Many of Freddie Mac's targeted affordable loan products complement or support these state and local programs. We look forward to partnering with state and local agencies as they develop initiatives to preserve affordable housing.

*Other Initiatives.* The ANPR seeks comment on whether HUD's Neighborhood Stabilization Program and state and local foreclosure prevention programs should be considered for the duty to serve affordable housing preservation. We believe that such programs clearly fall within the scope of affordable housing preservation and strongly support FHFA's proposal. The inclusion of these programs is fully consistent with FHFA's view that the "Enterprises are not limited to assisting these [statutorily-enumerated] programs as their sole means of fulfilling their duty to serve the affordable housing preservation market."<sup>21</sup>

More generally, we believe that Enterprise initiatives that stem the tide of foreclosures should be eligible under the duty to serve the affordable housing preservation market. As discussed above, the Enterprises' efforts under the Administration's MHA programs should be eligible for credit under the duty to serve. Freddie Mac wholly supports, and its resources are aligned with, the federal government's groundbreaking effort to stabilize communities by helping millions of distressed homeowners obtain more affordable and sustainable mortgage terms. In particular, the Home Affordable Modification Program offers a strong foreclosure prevention solution by expanding eligibility to borrowers with Freddie Mac-owned mortgages who are delinquent, as well as borrowers who are current but in imminent default. The Freddie Mac Relief Refinance Mortgage provides broad market availability with options designed to help borrowers who are making timely mortgage payments but have been unable to refinance due to declining property values. By helping more borrowers through these programs, we believe Freddie Mac is part of a critical and stabilizing force for the nation's families and their communities.

---

<sup>21</sup> 74 Fed. Reg. 38,574.

### C. Rural Areas

Freddie Mac recognizes the challenges to affordable homeownership and rental housing in rural areas, and has played an active role in providing liquidity to this segment of the market. Our support in rural areas has been substantial. From 2000 to July 2009, Freddie Mac purchased \$398 billion in non-metropolitan mortgages (as defined for affordable housing goal purposes) representing over 3.2 million units. Of the approximately 148,000 manufactured home mortgages purchased during that same period, approximately 43 percent were located in non-metropolitan areas. We are committed to providing liquidity and stability to rural markets as part of supporting the overall conventional, conforming mortgage market; we will also explore more targeted efforts to support underserved segments of rural markets.

As FHFA observed, the scope of this underserved market is dependent on the definition of “rural areas” — a term for which little statutory guidance exists.<sup>22</sup> In the absence of clear legislative intent or FHFA-defined policy objectives, we believe that the broadest definition — the third definition identified by FHFA, which combines the U.S. Census Bureau “nonmetropolitan” definition with all census tracts outside of urbanized areas and urban clusters, as designated by USDA’s Rural-Urban Commuting Area code — is preferable. This definition would provide the Enterprises with the greatest degree of flexibility to target and serve underserved segments of the market.

Beyond the “rural areas” definition, we ask and seek to engage in a dialogue with FHFA to clarify the underserved mortgage finance needs in rural communities that would be appropriate for Enterprise intervention. In doing so, FHFA should consider whether and how the Enterprises’ activities in this space would complement, rather than supplant or work against, existing federal government programs focused on rural markets.

Lastly, we note the overlap that exists between the rural areas and manufactured housing underserved markets, and possibly with affordable housing preservation programs. Manufactured housing is especially prevalent in rural areas. We strongly believe that activities qualifying under either the manufactured housing or affordable housing preservation underserved markets should be eligible for credit under the rural category as well.

---

<sup>22</sup> See 74 Fed. Reg. at 38,574.

#### IV. PERFORMANCE EVALUATION CRITERIA

Congress directed FHFA to establish for 2010 and thereafter a manner for evaluating whether, and the extent to which, the Enterprises have complied with the duty to serve and for rating the extent of such compliance. FHFA will separately evaluate whether the Enterprise has complied with such duty for each of the three underserved markets, taking into account various considerations.<sup>23</sup> We discuss our recommendations below on this evaluation criteria and process.

##### A. Importance of Flexibility and Advance Communication to the Enterprises of Weightings and Standards

We agree with FHFA that the “Enterprises’ performance under the three underserved markets may vary significantly from year to year because the needs and opportunities of one market may require more attention and resources than the needs of another market.”<sup>24</sup> We further agree that “the method for evaluating the Enterprises’ performance of the duty to serve underserved markets should be sufficiently flexible to account for these variations in market needs and opportunities.”<sup>25</sup> The same flexibility should be provided with respect to the application of the four statutory considerations (discussed in greater detail below): the regulations should provide flexibility on the weight, if any, given to each of the considerations in a given year. In this regard, the regulations should not have the effect of micro-managing the decisions of the Enterprises, but rather should encourage the Enterprises to be flexible and adaptable in exercising their business judgment such that business and regulatory policy objectives (both from a duty to serve perspective and a safety and soundness perspective) are aligned.

The Enterprises also would require sufficient lead-time to plan for the steps each would take to meet the regulatory objectives that would satisfy or demonstrate achievement of the duty with respect to each of the identified underserved markets. The regulations should specify that FHFA will provide the Enterprises with the respective weightings of each statutory consideration for each underserved market in advance of the evaluation year to enable them to prepare for and develop business concepts and initiatives. In addition, a regulatory mechanism should allow FHFA to adjust during the year the weightings given to each consideration (for each underserved market) based on evolving market conditions. The regulations also should permit the Enterprises to request revisions to the weightings during the year. Indeed, the ability to refine and gain practical experience from the initial implementation of this process would further support the transition year approach discussed above.

---

<sup>23</sup> See FHEFSSA § 1335(d)(2), 12 U.S.C. § 4565(d)(2), as amended by HERA.

<sup>24</sup> 74 Fed. Reg. 38,575.

<sup>25</sup> *Id.*

Finally, the regulations should provide the Enterprises with the ability to appeal the weightings set by FHFA based on changing market conditions, needs and opportunities, as well as the circumstances faced by the particular Enterprise.

## **B. Mechanics of Compliance Evaluation**

Beyond the need for flexibility and advance communications between FHFA and the Enterprises, we recommend the following considerations be incorporated in the duty to serve evaluation structure.

First, the rating categories should be clear, objective and easy to understand. We believe that the regulations should establish fewer, broader rating categories, such as “outstanding,” “satisfactory” and “needs to improve,” to determine Enterprise performance in support of the duty to serve.

Second, consistent with the guiding principles outlined above, the evaluation criteria should affirmatively incorporate the concept of prudent risk management, recognizing that the Enterprises should not take any steps that would impede or impair the implementation of prudent risk management techniques in executing initiatives to meet the duty to serve.

Third, FHFA should take into account the requirements, processes and lead-time associated with developing loan products and initiatives, including the extensive submission and approval process required under FHFA’s new products regulation. Accordingly, the regulations should recognize and provide credit for resources dedicated to (and interim progress on) serving any of the underserved markets.

Fourth, FHFA’s rating process should consider each Enterprise’s market positions as the respective baseline starting points for separate evaluations. Each Enterprise has its own mix of sourcing relationships and changes in those relationships as well as general market and economic conditions may favor one Enterprise over the other in the performance of certain aspects of the duty to serve.<sup>26</sup> Thus, the regulations should not inject hard and fast rules into the evaluation process, but rather, should put in place an evaluation framework that accommodates an Enterprise’s individual circumstances.

Fifth, consistent with FHFA’s statement in the ANPR,<sup>27</sup> a given Enterprise activity should be permitted to receive credit under more than one underserved market category (potentially all three underserved markets, if applicable). Likewise, FHFA should clarify in its regulations that mortgage purchase activities that satisfy the duty to serve can also qualify under the affordable housing goals (and vice versa).

---

<sup>26</sup> Congress directed FHFA, beginning for 2010, to “evaluate such compliance and rate the performance of *each enterprise* as to extent of compliance.” FHEFSSA § 1335(d)(1), 12 U.S.C. § 4565(d)(1), as amended by HERA (emphasis added).

<sup>27</sup> 74 Fed. Reg. 38,573.

Finally, we seek clarification from FHFA regarding the compliance review schedule. We ask whether the review would be conducted only after the end of an evaluation year or whether there might be a mid-year review to consider changes in the market, for example, that could affect the Enterprises' performance under the duty to serve. We also seek guidance regarding the possible submission near the beginning of an evaluation year of a strategic duty to serve plan designed to guide an Enterprise's efforts toward duty to serve fulfillment and, if approved by FHFA, could serve as the basis upon which FHFA could assess whether the Enterprise complied with the duty to serve.

### **C. Statutory Considerations**

The ANPR suggests potential consideration of four "tests" that correspond to the statutory considerations identified in HERA. We believe that the use of four separate and distinct "tests," whether subsequently aggregated or not, may create confusion or, at a minimum, lead to counterproductive inflexibility in the evaluation process. Treating each element of compliance as a "consideration," according to the statutory language, allows for a more adaptive, nuanced and flexible approach consistent with FHFA's observation about inter-year market dynamics and volatility. In any event, we strongly recommend that FHFA establish flexible weightings for the considerations (based on market conditions and the circumstances facing each Enterprise) and, as discussed, communicate those weightings to the Enterprises in advance of the evaluation year.

#### *Loan Products, Flexible Underwriting and Innovation Consideration*

The duty to serve envisions innovative approaches to providing financing to each of the underserved markets. Enterprise-initiated standardization or efficiencies that benefit the underserved markets (whether or not a specific "product" is launched in the secondary mortgage market) should receive credit under the duty to serve. Any verifiable steps toward these objectives, within the scope of the Enterprises' role in the secondary mortgage market, also should be eligible for credit (particularly in "transition year" 2010). Innovation that leads to sustainable and responsible lending practices should receive special recognition.

More flexible underwriting guidelines, of course, should not be construed as simply lowering underwriting standards. As FHFA observes, "any activity undertaken pursuant to the duty to serve must be consistent with [FHEFSSA], the safe and sound operation of the Enterprise, and the public interest."<sup>28</sup> Short-term injections of liquidity through an expanded "credit box," for example, do not necessarily lead to long-term benefits for the underserved market and could lead to market distortions, community destabilization and other unintended consequences. Accordingly, Freddie Mac is approaching the statutory direction on developing flexible underwriting guidelines in a manner consistent with safe and sound practices, rather than in a

---

<sup>28</sup> *Id.*

manner that could have the unintentional consequence of placing borrowers in mortgages they cannot afford.

### *Outreach Consideration*

The Outreach consideration, we believe, should be viewed expansively. The statute targets outreach to “qualified loan sellers and *other market participants*.”<sup>29</sup> Beyond developing or expanding sourcing channels for mortgages originated in underserved markets, outreach to a broad range of market participants — nonprofit entities, government agencies, consumer groups, other organizations interfacing with borrowers — should be eligible under this consideration. With regard to consumer groups, financial education, counseling and other outreach activities that assist borrowers and their families are particularly important in underserved markets. We therefore urge FHFA to adopt a broad scope for this consideration that would encourage the development and deepening of relationships with the full spectrum of market participants in support of the statutory duty.

### *Purchase Consideration*

FHFA must consider “the volume of loans purchased in each of such underserved markets relative to the market opportunities available to the enterprise, except that the Director [of FHFA] shall not establish specific quantitative targets nor evaluate the enterprises based solely on the volume of loans purchased . . . .”<sup>30</sup>

The statutory language suggests several points. First, while the volume of loans purchased is a necessary consideration, Congress made clear that the consideration itself is qualitative in nature. To implicitly assume quantitative targets within the duty to serve regime would blur the line separating it from the purely quantitative affordable housing goals. This would, in our view, create redundant and overlapping regulatory regimes in a manner contrary to Congressional intent and FHFA’s statement on the distinction between the housing goals and the duty to serve.

Second, the volume of loans evaluated must be viewed relative to “the market opportunities available to the enterprise.” Congress expressly acknowledged the dynamic and evolving market conditions that determine the opportunities available to the Enterprises. Consequently, we question whether FHFA should engage in a market sizing exercise for this rulemaking. Assuming that accurate market data are even available to size each underserved market — a highly questionable assumption at best — market conditions could easily change, thereby diminishing the value of any benchmarks established.

---

<sup>29</sup> FHEFSSA § 1335(d)(2)(B), 12 U.S.C. § 4565(d)(2)(B), as amended by HERA (emphasis added).

<sup>30</sup> FHEFSSA § 1335(d)(2)(C), 12 U.S.C. § 4565(d)(2)(C), as amended by HERA.

Third, accurately identifying the market opportunities available to the Enterprise necessarily involves a near-contemporaneous evaluation of such opportunities. To prospectively determine the market opportunities that might be available during the course of a year within the specified underserved markets is a difficult task. Although an initial preliminary assessment can be made prior to the evaluation year (and communicated to the Enterprises), we believe that those assessments should be adjusted on an ongoing basis throughout the year.

Last, in determining the “volume of loans purchased,” FHFA should rely on the number of units financed, as the unit measure, we believe, is more representative of the benefit to households served by our mortgage purchase activities compared to the other metrics identified.

### *Grants and Investments Consideration*

Freddie Mac has extensive experience serving and investing in underserved communities.<sup>31</sup> Through our philanthropic and investment activities, we strengthen communities by promoting affordable housing and helping families stay in their homes and thrive. Together with the Freddie Mac Foundation, we are a major donor in our region, investing in nonprofits that enhance conditions for children and their families. Our corporate citizenship efforts include other housing, volunteer, diversity, and employee programs. And while an Enterprise’s capacity to provide grants or investments will depend on its financial condition, we believe that Freddie Mac can effectively deploy the resources available to us to support the underserved markets identified by Congress.

To leverage the Enterprises’ areas of expertise, this fourth consideration should provide flexibility to the Enterprises and allow a broad range of grants and investments to qualify under the duty to serve, so long as they support one or more underserved markets. The regulations, in particular, should recognize the Enterprise’s business judgment with regard to the forms of execution utilized (*e.g.*, grants or investments), the organizations assisted, and the amounts deployed. Capacity-building investments designed to target a segment of an underserved market, for instance, could be made through one of our business lines, as well as through philanthropic channels; the Enterprises should be given the latitude to exercise such judgment under the duty to serve. We also recommend that the regulations provide credit for grants and contributions made by an Enterprise’s foundation that support one or more underserved markets. Certain foundation grants, for example, could provide important support to affordable housing preservation initiatives. Grants and contributions that support an underserved market and otherwise meet federal tax and other applicable rules, we believe, should be eligible under the statutory duty.

---

<sup>31</sup> See <http://freddiemac.com/corporate/citizenship> (Freddie Mac website); <http://www.freddiemacfoundation.org> (Freddie Mac Foundation website).

## V. REPORTS TO FHFA

The ANPR states that FHFA would require annual reports from the Enterprises on their performance under the duty to serve. Given the diversity of activities that could support an Enterprises' duty to serve from year-to-year, flexibility in these reports is critical. FHFA should refrain from creating rigid forms and utilize existing systems and processes.

Importantly, because some of the information in our reports to FHFA could contain confidential and proprietary information, we anticipate requesting confidential treatment for our reports or portions thereof. The regulations should expressly allow for such treatment.

Finally, the ANPR states: "the Enterprise would certify to the accuracy of the information submitted." We believe that a simple and streamlined certification process would work best in this context because as regulator and conservator, FHFA has ample authority and opportunity to verify any information and statements contained in our reports. We believe an onerous certification requirement is not required and would not improve the accuracy of the information provided to FHFA.

## CONCLUSION

Freddie Mac appreciates the opportunity to comment on this important rulemaking. We look forward to engaging in efforts to serve the underserved markets identified by Congress in order to "increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing."<sup>32</sup>

---

<sup>32</sup> FHEFSSA § 1335(a)(1), 12 U.S.C. § 4565(a)(1), as amended by HERA.