September 24, 2009

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

Attention: Comments/RIN 2590-AA27

Dear Mr. Pollard:

The Independent Community Bankers of America[1] (ICBA) welcomes the opportunity to comment on the advance notice of proposed rulemaking regarding Fannie Mae's and Freddie Mac's duty to serve underserved markets. Approximately half of ICBA's nearly 5,000 members serve rural areas. Manufactured housing is an important affordable housing alternative in many communities. Preserving affordable housing is important to all communities, rural and urban.

The Housing and Economic Recovery Act of 2008 established for Fannie Mae and Freddie Mac a "duty to serve" three underserved markets: manufactured housing, affordable housing preservation, and rural areas. The purpose is to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing in those markets. Beginning in 2010, the Federal Housing Finance Agency (FHFA) must establish a method to evaluate whether and to what extent Fannie Mae and Freddie Mac have complied with the duty to serve underserved markets and rate the extent of their compliance. The FHFA is asking for information about the characteristics and types of transactions and activities that should be considered in this process and how such transactions and activities should be evaluated and rated for

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[1] *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing over 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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determining Fannie Mae's and Freddie Mac's performance of their duty to serve underserved markets.

ICBA's Views

Creating a strong, reliable secondary market that serves rural underserved areas, manufactured housing and affordable housing preservation is an important function of Fannie Mae and Freddie Mac as government sponsored enterprises (GSEs). These markets face significant housing finance challenges even in the best of times. We believe that Fannie Mae and Freddie Mac have an important role in providing liquidity to these markets and should use their knowledge and expertise to create appropriately flexible underwriting standards and special products to get and keep credit flowing to these underserved markets.

The FHFB has asked if "HOEPA" mortgages should qualify toward the duty to serve and if mortgages that do not conform to the Interagency Statement on Subprime Lending and the Interagency Guidance on Nontraditional Mortgage Products Risk should be disqualified. ICBA believes that mortgages for residences in underserved areas should be subject to such regulatory guidance to ensure that the mortgages are affordable and do not carry predatory characteristics. However, we urge the FHFA to take into consideration the fact that by their nature these mortgages, particularly those on manufactured housing loans, may well need to have higher costs than traditional mortgages to offset their risks. Given the current interest rate environment, some "HOEPA" loans may carry historically low interest rates and be affordable loans. We are confident that if Fannie Mae and Freddie Mac play a strong role in ensuring a viable, reliable secondary market for these mortgages, these loan rates will come into closer parity to traditional conforming mortgages, but differences may not disappear entirely.

Below are additional comments on specific underserved areas.

Manufactured Housing

By law, Fannie Mae and Freddie Mac are required to develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low- and moderate income families. A "manufactured home" is defined as a structure, transportable in one or more sections, which is built on a permanent frame and is designed to be used as a dwelling when connected to the required utilities. Many manufactured home residents site their homes in manufactured home parks and rent the underlying land. Some manufactured home parks are investor-owned and others are resident-owned.

ICBA has long urged the GSEs to do more to find ways to support the financing of manufactured housing because it is such an important source of affordable housing in many communities across the country, particularly in southern states and rural areas. Providing a secondary market for manufactured housing loans is certainly challenging and a once functioning market has all but disappeared. Some community banks are providing loans for manufactured housing and keeping the loans on their books because of the importance of this housing alternative to their communities.

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The FHFA states that it may consider loans secured by both real and personal property in evaluating whether Fannie Mae and Freddie Mac have complied with the duty to serve. In some jurisdictions manufactured homes are financed as personal property and the loan to the homebuyer is secured by a lien only on the manufactured home. Neither of the GSEs currently purchase personal property loans on manufactured housing on a flow basis. ICBA believes that a viable secondary market for both types of loans is needed and both should be counted toward the duty to serve to encourage the GSEs to develop these markets in a safe and sound manner.

Rural Markets

Underwriting rural residential mortgages for the secondary market has long been a problem for community banks serving rural areas. Residential mortgage lending in rural America is very different from that in urban areas. The secondary market, including underwriting standards, was developed for the urban market and does not always work well in rural areas. Often, existing flexibilities in underwriting standards are not understood by lenders, appraisers, poolers and securitizers.

Often, the credit histories for rural residents do not look like those of urban residents because of seasonal income. Appraisal problems are common. Residences in rural areas are not the "cookie cutter" properties that are best suited for current secondary market underwriting standards. The property or its location may have unique characteristics. While properties are primarily residential, not agricultural, there may be outbuildings that suggest otherwise. These properties may include more land than is typical for an urban or suburban property, due to zoning requirements or the borrower's wish for space. These differences often result in difficulties obtaining comparable property information for appraisals. More appraisal valuation adjustments are likely needed. Even in strong housing markets, sales are fewer than in urban areas because there are simply few properties that are comparable. In many rural areas, particularly western states, appraisers may need to travel 50 miles to find suitable comparables.

Community bankers commonly find that these special circumstances make underwriting these properties for current secondary market standards difficult or impossible. By not being able to sell many of these loans, community banks are limited in their ability to keep residential mortgage credit flowing in their communities.

The ICBA has worked with Fannie Mae, Freddie Mac and Farmer Mac over the years to help community banks gain better access to the secondary markets. While progress has been made, much more is needed. When the Department of Housing and Urban Development proposed goals for mortgage purchases by Fannie Mae and Freddie Mac, the ICBA urged the agency to make the rural goal broad so more of the GSEs' business would be focused in rural America. Over ten years ago, ICBA worked with Fannie Mae to address misunderstandings about rural properties and their ability to be underwritten for the secondary market. This effort resulted in the development of Fannie Mae's *Underwriting Rural Properties* guidance that was published in 1996. This clarified many underwriting issues and greatly helped community banks sell their mortgages. But in the last several years, community banks once again have faced the same underwriting issues.

Thus, it is not enough that underwriting standards be flexible, this flexibility must be communicated to and understood by all parties in the transaction and must be used.

Definition of Rural

The FHFA is seeking help in developing a definition of "rural" for the purpose of this rule and suggests three alternatives:

1. Base the definition on classifications used by the U.S. Census Bureau for the 2000 census. Urban areas are classified as all territory, population and housing units located within an "urbanized area" and "urban cluster." In general, 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 would be all territory outside urbanized areas and clusters.

2. Define rural areas as all counties assigned a U.S. Department of Agriculture Rural-Urban Continuum (RUC) code. The FHFA states that the disadvantage of using RUC codes is that they are county-based so could contain both urban and rural areas. This is a greater problem in large counties west of the Mississippi River.

3. Combine the two designations, using all census tracts designated by the Census Bureau as nonmetropolitan and the tracts outside urbanized areas and urban clusters and compare these areas against the RUC codes. Using this definition, 29 percent of the census tracts in the 50 states would be rural areas. It would also capture 27 percent of the "underserved areas" as defined by the Fannie Mae and Freddie Mac affordable housing goals regulation. This definition would cover most, but not all Tribal lands.

ICBA recognizes that defining "rural" areas is challenging as there are often rural pockets in suburban areas and pockets with urban or suburban characteristics in rural areas. In our view, definition one would be the most suitable in identifying underserved rural areas (all territory outside urbanized areas and clusters) and relatively easy to use. It is in towns of 2,500 or less that are the most underserved rural areas.

Evaluation of Performance

The FHFA is seeking comments on criteria for determining whether Fannie Mae and Freddie Mac have complied with the duty to serve underserved markets. Because market conditions can fluctuate and needs of one market may be greater than those of another from year to year, the performance measures should be sufficiently flexible to account for market variations and opportunities. We agree. Events in certain geographic areas may necessitate a greater focus in one year versus another. Also performance criteria should be such that the two GSEs are not forced to seek loans that will not perform over the long-term simply to meet performance goals.

Product Test: This test requires Fannie Mae and Freddie Mac to develop loan products, more flexible underwriting guidelines and other innovative approaches to providing financing to each underserved market. ICBA believes that this is an important requirement to increase affordable mortgages in these underserved areas. It may be particularly important for manufactured housing which may be considered personal property, located on rented land, and where the useful life of the underlying property is quite different than that of traditional housing stock. This will necessitate the development of different loan terms and conditions in order to lend to this market segment in a safe and sound manner.

Outreach Test: This second criterion evaluates the extent of outreach by Fannie Mae and Freddie Mac to qualified loan sellers and other market participants in each of the underserved areas. An outreach test is important to ensure that loan originators throughout the country become aware of new products and underwriting flexibilities that the two GSEs develop to help underserved areas and how best to utilize them. Evidence of outreach efforts will be particularly important in rural areas where mortgage volume will be low and the size of loans relatively small.

Purchase Test: This test would consider the volume of loans purchased in each of the underserved markets relative to the market opportunities available to Fannie Mae and Freddie Mac. The FHFA cannot by law establish specific quantitative targets nor evaluate the GSEs based solely on the volume of loans purchased.

While there are some rural areas where housing prices can be relatively high, often housing costs in rural areas are relatively low. We believe that the number of units financed compared to market potential would be the most appropriate way to consider whether a GSE is meeting its duty to serve. Looking at the unpaid principal balance may encourage the financing of loans with higher loan-to-value ratios in order to better demonstrate compliance. More conservative, lower loan-to-value ratio loans should not be considered to be of lesser value for the purpose of determining duty to serve.

Grants Test: This fourth criterion requires an evaluation of the amount of investments and grants in projects which assist in meeting the needs of the underserved markets. Community banks have told ICBA that down payment assistance programs often are the best and most effective vehicles to help lower-income borrowers when looking at the Federal Home Loan Bank Affordable Housing Programs. We believe that this experience is helpful in considering workable options to provide assistance by Fannie Mae and Freddie Mac in underserved areas.

Rating Performance: The FHFA is considering developing a rating method for Fannie Mae and Freddie Mac similar to the method used to determine whether a financial institution has met the requirements under the Community Reinvestment Act of 1977. The criteria listed above would be used with an overall rating for each underserved market of Outstanding, Satisfactory, Needs to Improve or Noncompliance. ICBA believes that there are elements of the Community Reinvestment Act rating system that could be applied in the development of a rating system for Fannie Mae and Freddie Mac.

Summary

ICBA believes that Fannie Mae and Freddie Mac can and should play an important role in developing a more viable, reliable secondary market for mortgages to underserved rural areas, manufactured housing and the preservation of affordable housing.

We appreciate the opportunity to comment on the advance notice of proposed rulemaking regarding duty to serve underserved markets. If you wish to discuss our comments further, please contact the undersigned at 202-659-8111 or email at ann.grochala@icba.org.

Sincerely,

/s/

Ann M. Grochala
Vice President
Lending and Accounting Policy