

# Consumer Mortgage Coalition

October 28, 2014

Mr. Alfred M. Pollard  
General Counsel  
Federal Housing Finance Agency, Eighth Floor  
400 Seventh Street SW, Washington, DC 20024  
[www.fhfa.gov/open-for-comment-or-input](http://www.fhfa.gov/open-for-comment-or-input)

Re: RIN 2590-AA65  
Affordable Housing Goals

Dear Mr. Pollard:

The Consumer Mortgage Coalition (“CMC”), a trade association of national mortgage lenders, servicers, and service providers, appreciates the opportunity to submit its comments in response to the Federal Housing and Finance Agency’s (“FHFA’s”) Notice of Proposed Rulemaking on the 2015-2017 Affordable Housing Goals. We applaud FHFA’s intent to provide the government-sponsored enterprises (the “Enterprises”) with effective affordable housing incentives, appropriate to the Enterprises’ statutory mandates and purposes.

## ***Overview***

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (the “Safety and Soundness Act”), requires the FHFA to establish annual housing goals for mortgages purchased by the Enterprises. The general purpose of the housing goals is to ensure that the Enterprises provide secondary market support to (1) creditworthy low- to moderate-income borrowers, and (2) the multi-family mortgage market, with a special focus on ensuring that affordable multifamily housing is available to low-income and very low-income families.

FHFA was also guided by the requirement that goals take into consideration the Enterprises ability to *lead* the market in service to key areas and populations.

In addition, in order to meet their housing goals, each Enterprise is required to “assist insured depository institutions to meet their obligations under the Community Reinvestment Act . . . which shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures...”<sup>1</sup>

---

<sup>1</sup> Safety and Soundness Act § 1335(b)(3)(B), 12 U.S.C. § 4565(b)(3)(B).

We would also like to note that access to housing, including affordable housing, is impacted by a range of factors including:

- Land use restrictions;
- Construction codes and costs;
- Property management costs;
- Energy costs; *and*
- Availability and cost of mortgage credit

For purposes of this comment letter, we focus on the availability and cost of mortgage credit.

### ***Background***

The Enterprises have been subject to affordable housing goals requirements since 1993. Yet, despite the Department of Housing and Urban Development (“HUD”) and FHFA being guided by the requirements set forth in the Safety and Soundness Act and the Home Equity Recovery Act of 2008 (“HERA”),<sup>2</sup> the Enterprises have lagged the affordable housing market.

In the 2000 and 2004 rulemakings, like the General Accounting Office, the Federal Reserve Board, the Urban Institute, and others, HUD concluded that the Enterprises continued to lag, rather than lead, the affordable housing market and that they failed to utilize their taxpayer-provided subsidies in leading the market in serving targeted, underserved, and lower-income markets:

“[T]he GSEs generally have been less active in historically underserved markets where there is a need for additional sources of financing to address persistent housing and credit needs, and fully private companies, operating without the benefits of GSE status, perform better in those markets.”<sup>3</sup>

HUD stated in the introduction to the proposed rule 2004 that “the GSEs need to increase their efforts further and demonstrate their capacity to be industry leaders.”<sup>4</sup>

In response to HUD’s proposed Affordable Housing Goals rulemakings in 2000 and 2004, the CMC filed detailed comment letters that recommended adjustments to the rules that would have directed the Enterprises to serve the underserved part of the affordable housing market and would have required the Enterprises to at least match, if not eventually lead, the market. A review of the CMC’s 2000 and 2004 comment letters might inform FHFA as it revisits these issues.<sup>5</sup>

---

<sup>2</sup> Pub. L. No. 110-289, 122 Stat 2654, which amended the Safety and Soundness Act.

<sup>3</sup> 69 Federal Register 24228, 24231 (May 3, 2004).

<sup>4</sup> *Id.*

<sup>5</sup> The CMC’s 2000 comment letter is [here](#), and the CMC’s 2004 comment letter is [here](#). See also a 2001 GSE Report Special Supplement, [Fannie Mae’s and Freddie Mac’s Unaffordable Housing Goals](#).

The CMC's 2004 comment letter, in particular, provided a detailed comparison of the Enterprises' Affordable Housing requirements, under the proposed rule, with the bank regulators' Community Reinvestment Act requirements. The CMC recommended that the Enterprises' Affordable Housing Goals and the Community Reinvestment Act requirements be synchronized.

We would note that the banking regulators have [\*solicited input\*](#) on revisions to the CRA requirements.<sup>6</sup> We would recommend that the FHFA place its rulemaking on hold until the banking regulators finalize their revisions, and then work to coordinate the Community Reinvestment Act ("CRA") requirements with the Affordable Housing Goals so that the Goals can facilitate the CRA.

Despite the recognition that the proposed rules would not further the affordable housing goals mandates set forth in the statute, the final HUD rules did not incorporate the changes recommended by the CMC and other financial services trade associations.

Following passage of the HERA, FHFA's 2010 rulemaking also did not make sufficient adjustments to the Enterprises' Affordable Housing Goals to meet their statutory housing duties. Perhaps this was because the Enterprises were in the early stages of their conservatorships.

At this time, however, the housing market faces a myriad of urgent challenges that will need to be addressed before FHFA's rule can have any meaningful impact on affordable housing.

A significant new constraint on lending is the ability-to-repay regulation, which imposes severe litigation risk for even minor underwriting errors. The regulation provides some protection for safe harbor qualified mortgage ("QM") loans, but they have price caps both on their interest rate and on their points and fees, and are therefore not available to many creditworthy borrowers. The regulation is intended to provide some protection to lenders who make rebuttable presumption QM loans, on which the interest rate is not directly capped. The regulation defines rebuttable presumption loans as those whose borrowers have sufficient residual income to repay the loan. However, the regulation does not define residual income and gives no indication of how much is enough. This lack of regulatory clarity, combined with severe liability for making a loan to a borrower with insufficient residual income, means lenders are quite reluctant to make such loans. Access to mortgage credit, but especially to the affordable housing sector, is suffering as a direct result.

The FHFA's general approach to setting the Affordable Housing Goals is to use a market-size model, using various data sources, including HMDA, to estimate what the Affordable Housing Goals should be for the Enterprises for the next four-year period, 2015 through 2018.

---

<sup>6</sup> 79 Fed. Reg. 53838 (September 10, 2014).

We would note that significant demographic changes are occurring in housing across the United States. Baby boomers, heading toward retirement, are relocating to states where the climate is milder and state taxes are lower. They are also “right-sizing” their homes, moving to homes that better meet their needs as they age, and they are shedding second homes, if they have them. Millennials, many of whom are burdened by unprecedented levels of student debt, and who are also facing employment headwinds, either cannot afford to buy a home at this stage in their lives, or they simply do not want to purchase a home. Some do not want the responsibility that homeownership brings or they want the flexibility to be able to relocate easily. The homeownership rate may not reach its pre-crisis level for the foreseeable future. Today, the homeownership rate is at its lowest level since 1995.

Since FHFA did not release enough information on its modeling, we are not able to provide detailed comments as to how well the model accurately depicts the housing market. However, as a general matter, basing future housing goals on past market trends will likely miss these important demographic changes even with well-informed attempts to more precisely size the market. Moreover, like HUD, FHFA did not synchronize the Enterprises’ Affordable Housing requirements with the requirements under the CRA.

### ***Recommendations***

First, as noted earlier, we recommend that the FHFA place its rulemaking on hold until the banking regulators finalize their revisions to the CRA, and then work to coordinate the CRA requirements with the affordable housing goals so that the goals can, at least, facilitate the CRA.

Second, while the Enterprises are in conservatorship, FHFA should take the opportunity to revisit the approach that has been taken in all of the Affordable Housing Goals regulations. Instead of using a model that requires continuous adjustments and that is likely to always be imprecise, we would recommend that the FHFA focus the Enterprises on accepting enhancements to mortgage products, programs, and services that are aimed at responsibly expanding the credit box, particularly to targeted borrowers.

We would note that Fannie Mae’s and Freddie Mac’s initial affordable housing products and programs were designed and implemented by private mortgage insurance companies in conjunction with lenders. Those programs were test-marketed and proved to be highly successful because they responsibly expanded access to affordable mortgage credit to targeted homebuyers. Those programs were based on borrowers’ needs, rather than on having the Enterprises try to meet an artificial market-size estimate. The programs ensured that consumers were placed in affordable, sustainable mortgage products that also had the benefit of being safe and sound financial products. In addition, the products and programs helped the participating financial institutions meet their CRA responsibilities.

While we recognize that the Goals are based on statutory parameters, Congress did provide FHFA with authority to lower the Goals as appropriate<sup>7</sup> and presumably thereby the authority to add needed flexibility that would better promote affordable housing.

Third, at some point, the Housing Trust Fund may be funded. Those funds could be used to subsidize targeted homebuyers and renters through well-designed programs that have been test-marketed and proven to be successful.

This approach seems far more sensible and is likely to deliver real benefits to real consumers, rather than relying on an approach that seems inordinately complex and generally creates friction between the Enterprises, their regulators, marketplace participants, and the consumers who are supposed to be the beneficiaries of these requirements.

At the same, FHFA should also address the following issues:

- *Representation and Warranty Risk:* The uncertainty over the Enterprises' enforcement of their underwriting representations and warranties and servicing rules has required lenders to apply broad credit overlays on their Enterprise lending. This has dramatically constrained lending, particularly to those with weaker credit profiles. This problem needs to be resolved if access to credit to those targeted by the Goals can be restored. We urge the FHFA to continue working to eliminate the need for *broad* credit overlays by providing clear guidance to lenders so that credit overlays can be limited to areas of actual credit risk.
- *PMIERS, LLPAs, and G-Fees:* The current private mortgage insurance eligibility requirements, the guarantee fees, and the loan level pricing adjustments impact significantly affordable lending through the Enterprises. Unless adjusted, eligible consumers will find that the Federal Housing Administration, Veterans Administration, and Rural Housing Service a more affordable option. We encourage the FHFA to be mindful of affordable housing needs as it revisits these issues.
- *Regulatory Uncertainty:* The Consumer Financial Protection Bureau ("CFPB") has finalized the most significant Dodd-Frank Act mortgage rulemakings, but because of the tight timelines that were imposed on the CFPB, the rulemakings are still in need of clarification. The Consumer Mortgage Coalition has submitted to the CFPB detailed Requests for Guidance on their mortgage origination and servicing rulemakings.<sup>8</sup> Without concrete guidance from the CFPB, the mortgage industry will continue to be constrained in its ability to advance mortgage credit, even to what are very creditworthy

---

<sup>7</sup> Safety and Soundness Act § 1334, 12 U.S.C. § 1254, as added by HERA § 1128(b).

<sup>8</sup> The CMC has submitted to the CFPB requests for guidance on [loan origination questions](#), [servicing questions](#), and on the new [integrated origination disclosures](#).

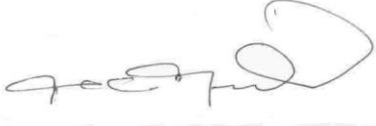
borrowers because of the liability in the event of an even minor error that might be the result of rules that are unclear.

We encourage the FHFA to work with the CFPB to formalize the clarifications that the marketplace needs.

***Conclusion***

We appreciate the FHFA's efforts to increase affordable housing. We encourage FHFA to look beyond the rigid housing goals approach of the past and to permit the Enterprises the flexibility to pursue more creative approaches to affordable housing that would help ease today's constrained mortgage markets.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne C. Canfield", is centered within a light gray rectangular box. The signature is fluid and cursive.

Anne C. Canfield  
Executive Director