October 28, 2014

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
400 7th St., SW
Washington, D.C. 20024

RE: RIN 2590-AA65 Enterprise Housing Goals

Dear Mr. Pollard:

The Federal Housing Finance Agency (FHFA) recently released for comments its proposed housing goals for Fannie Mae and Freddie Mac (the GSEs).[1] The Mortgage Bankers Association (MBA)[2] appreciates the opportunity to comment on this important proposal. What follows are MBA's comments from both the residential and multifamily perspectives.

Residential Comments

MBA believes the GSEs should ensure a liquid, competitive, and resilient single-family housing market. However, while the current and proposed single-family housing goals have the right intention, as detailed further below, there are more immediate and positive steps that the GSEs can take to ensure lower- and moderate-income borrowers have access to safe and sustainable mortgage credit than the proposed housing goals.

Since the financial crisis, the GSEs have forced lenders to repurchase roughly $100 billion in single-family loans based on perceived breaches of representations and warranties made by lenders to the GSEs. While some repurchases were no doubt justified, a significant amount of these repurchase requests were based on technical, minor defects or a "re-underwriting" of defaulted loans years after the fact. The aggressive approach taken by the GSEs has led to significant uncertainty among lenders over the ultimate liability for a loan that goes into default, resulting in a significant constraint on lower- and moderate-income borrowers' access to credit. The effect of this approach can be seen in the credit score and loan-to-value ratio (LTV) for the GSEs' current book of business – the average FICO score for the GSEs' 2013 book of business was 762, with an LTV of 71 percent. In essence, the GSEs' aggressive repurchase policies have contributed to lenders instituting overlays that all too often prevent lower- and moderate-

[1] 79 Fed. Reg. 54482 (Sept. 11, 2014).
[2] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

income borrowers – the consumers the single-family housing goals are intended to serve – from accessing conventional mortgage financing.

FHFA's recent announcement to provide clarity concerning representation and warranty liability represents significant progress in the ongoing dialog between the industry, FHFA and the GSEs in addressing issues of access to credit to lower- and moderate-income borrowers. MBA appreciates the partnership among the parties to produce these results. However, that step alone is not a panacea and depends in large part on the successful completion of other steps, such as development of an independent dispute resolution process and a clear framework for lower-severity defects. Better clarity in the risks associated with "manufacturing" a loan will help expand access to credit more broadly. In addition to providing more clarity on representations and warranties, MBA believes the following steps would be impactful in providing access to credit for lower- and moderate-income borrowers:

Maintain Current Guarantee Fees (G-Fees) and Reduce Loan Level Price Adjustments (LLPAs).

As discussed in previous comments, MBA is significantly concerned by the lack of financing in the conventional market for first-time homebuyers and other lower- and moderate-income buyers, market segments most impacted by the increases in G-Fees and LLPAs in recent years. Importantly, G-Fees impact not only the monthly cost a borrower will pay during the life of their loan, but also impact whether a borrower can qualify for a given loan in the first place. These fees, more than any affordable housing goals, have a direct impact on the availability of credit to lower- and moderate-income borrowers. Because of these high fees, borrowers who previously would have obtained conventional credit are opting for FHA or VA loans or are foregoing their home purchase altogether.

The GSEs should also reduce LLPAs in recognition of the reduced counterparty risk exposure faced by the GSEs. Although loans with higher loan-to-value ratios (LTVs) require loan-level mortgage insurance (MI), current GSE pricing does not fully account for this credit enhancement. The result is that current credit pricing is higher than it needs to be and presents an unnecessary obstacle to home purchases. This is particularly problematic now that the GSEs are moving to implement strong eligibility criteria for private MI firms.

FHFA should adopt a program to utilize greater up-front risk-sharing on high LTV loans and coverage on loans with LTVs below 80 percent, accompanied by a reduction in G-fees.

MBA has previously urged that FHFA should direct the GSEs to implement an up-front risk sharing program, highlighted by deeper mortgage insurance (MI) coverage on higher LTV loans and coverage of lower LTV loans, e.g. coverage for a 70 percent LTV loan down to an effective LTV of 50 percent. Under this proposal, a lender could seek loan-level coverage from an MI company and in turn receive commensurately lower G-Fees and LLPAs from the GSEs. MI companies could potentially insure down to an effective LTV of 50 percent, leaving the GSEs covering only a pure catastrophic risk position. The market would benefit from competition and increased price transparency, and consumers, including lower- to moderate-income borrowers, would likely benefit through lower costs.

Addressing the above issues will have more of an impact on access to credit for lower- and moderate-income borrowers than directing the GSEs to ensure that they purchase percentage amounts of certain types of loans. In fact, resolution of these issues would bring more lower- and moderate-income borrowers into the marketplace.

MBA also suggests the following principles for the proposed single-family housing goals:

FHFA should maintain the current system of using a prospective benchmark and a retrospective market level to measure GSE Performance.

Currently, the single-family housing goals have measured the GSEs by comparing their performance to both: (1) A benchmark level that is set in advance, and (2) the actual market level, as measured retrospectively based on Home Mortgage Disclosure Act data. A GSE has met a goal if it achieves either the benchmark level for that goal, or the actual, retrospective market size for that goal. In essence, the GSEs can meet a goal by reaching either the lower of the benchmark level or the retrospective HMDA market level.

MBA believes that the current system should be maintained as both measurements are useful. While prospective benchmarks allow the GSEs to develop business plans and products designed to meet the goals, setting prospective benchmarks up to several years out will always be difficult. Consequently, using retrospective HMDA market level data provides another measurement that is responsive to market conditions. Moreover, the sole use of prospective benchmarks could encourage the GSEs to purchase riskier loans in a market downturn.

Single-family housing goals should be set at levels which are in line with market expectations.

Under the Safety and Soundness Act, the single-family housing goals are limited to mortgages on owner-occupied housing with one to four units total. MBA appreciates FHFA's proposal to generally align the GSEs' affordable housing goals with projected market conditions as the housing market continues its slow and uneven recovery. MBA notes that setting the single-family housing goals too high may lead to the GSEs being forced to purchase loans or offer products that attract borrowers ill-positioned for successful and sustainable homeownership.

MBA agrees that if FHFA determines that any of the single-family housing goals should be adjusted in light of market conditions, to ensure the safety and soundness of the Enterprises, or for any other reason, FHFA should take any steps that are necessary and appropriate to adjust that goal.

Multifamily Comments

Overview

For the financing and support of multifamily rental housing, Fannie Mae and Freddie Mac, working with their multifamily lender partners, have continued to provide liquidity and stability in all market cycles and in a broad range of geographic markets. The multifamily businesses of both GSEs have played a counter-cyclical role with very strong credit performance, in a manner that incorporates substantial private capital bearing credit risk. And as FHFA observed, the GSEs "play a significant role in supporting multifamily housing needs, particularly for low-income households."[3]

Ensuring liquidity, stability and affordability is vital to the multifamily rental housing market. As FHFA is aware, a broad range of capital sources support the multifamily housing market, including private capital and government-sponsored sources. The diversification of debt capital sources in multifamily finance is currently very strong. Given the competition that exists in the market, we encourage FHFA to continue to support GSE multifamily activities that strengthen liquidity, stability and affordability, monitor ongoing market dynamics, and refrain from regulatory intervention that would be harmful to the competitive landscape and compromise the safe and sound operations of the GSEs' multifamily businesses.

We appreciate FHFA's attention to the affordable segments of the multifamily housing market through the proposed affordable housing goals. At the same time, we underscore that multifamily housing, by its very nature, tends to be affordable, and encourage FHFA to be mindful that the range of multifamily rental housing segments, including "workforce" housing, is fundamentally important to families of modest incomes.

Interplay Between the Housing Goals and Market Conditions

Following the enactment of the Housing and Economic Recovery Act of 2008 (HERA),[4] FHFA has sought to align the affordable housing goals with projected market conditions and production levels in the primary origination market. For the multifamily housing goals, however, the lack of comprehensive data about the multifamily market makes it difficult to establish a retrospective performance measure based on the actual production in the rental housing market.

Due to significant competition among capital sources in the multifamily finance market — including transactions with significant private capital — the GSEs' competitive position is heavily dependent on market dynamics. This includes the loans in the more affordable multifamily markets. As FHFA observed, "[i]ncreased demand for multifamily housing and strong investment returns have attracted banks, insurance companies, CMBS issuers, and other private lenders back to the multifamily market. Much of the increase in private sector activity has come from commercial banks and life insurance companies, the entities other than the Enterprises, that purchase the most multifamily mortgages."[5]

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[3] FHFA Strategic Plan: Fiscal Years 2015-2019, August 15, 2014, p. 11.
[4] Public Law 110-289 (July 30, 2008).
[5] 79 Fed. Reg. at 54491-92.

MBA's Annual Report on Multifamily Lending shows that in 2013, 2,898 different multifamily lenders provided a total of more than $172.5 billion in financing for multifamily properties.[6] As the report indicates, "[t]he multifamily lending universe is widely diverse." A total of 1,800 lenders made five or fewer multifamily loans during the year. In light of the healthy competitive landscape, we urge FHFA to exercise caution in placing substantial pressure to support particular segments of the market, such as in the small multifamily property market, as discussed below. We also recommend that FHFA monitor ongoing market dynamics and the competitive position of the GSEs in order to be prepared to adjust the multifamily goals.

Interplay Between the Affordable Housing Goals and Other Regulatory Directives

Equally important is the interaction between the affordable housing goals and other regulatory directives. FHFA's 2014 scorecard for the GSEs in conservatorship places dollar volume caps (which differ for each GSE) on their new multifamily business in 2014. To the extent that FHFA considers imposing dollar volume caps during the 2015-2017 period, the housing goals set for both GSEs — and each GSE with respect to the other — should take into account the caps placed on production activity. Other aspects of the conservatorship scorecard should be considered in the context of the housing goals as well. We note that while units in small multifamily properties would be exempt from the volume cap, many other goal-qualifying units may not under the current scorecard approach.

More broadly, the affordable housing goals, including both the benchmarks and counting rules, should be aligned with the priorities set by FHFA for the GSEs in conservatorship, whether in the conservatorship scorecard or through other means. Failure to do so could give the GSEs conflicting mandates and lead to confusion in the market, including for lender partners, which could inhibit the liquidity they provide to the broad multifamily rental housing market.

Lastly, should FHFA contemplate issuing proposed rules on the duty to serve underserved markets, we urge coordination between those rules, the affordable housing goals and other FHFA directives that would impact the GSEs' multifamily businesses.

Directional Parity under Affordable Housing Goals and Scorecard Mandates

In reviewing the multifamily goals targets, FHFA generally appears to be seeking to align and create parity between Fannie Mae and Freddie Mac. We agree with this approach. We believe that the two GSEs, over time, should be subject to the same multifamily benchmarks.

Likewise, if the two GSEs are to be subject to the same multifamily housing goals, other regulatory constraints on Fannie Mae and Freddie Mac should be the same as well. The dollar volume cap on the two multifamily businesses, if they are maintained in some form, is an area where parity between the two GSEs would be appropriate.

Proposed Small Multifamily Subgoal

FHFA is proposing to establish a new low-income subgoal for small multifamily mortgages for units that qualify under the low-income threshold (i.e., 80 percent of area median income). We understand that FHFA has made the financing of small multifamily properties a policy priority. In

[6] MBA Annual Report on Multifamily Lending 2013, at p. 5.

addition to the new proposed subgoal, FHFA's 2014 scorecard for the GSEs excludes loans on small multifamily properties from the 2014 dollar volume caps.

We agree that the small multifamily loan market comprises a significant portion of the multifamily market and of the affordable housing supply. We view the new subgoal levels, however, as being quite aggressive and are concerned with the potential unintended consequences.

First, we believe the new subgoal is set at elevated levels, particularly in light of Fannie Mae and Freddie Mac's historical activity in this market, and other capital sources that are active in this market. According to its Annual Housing and Mortgage Reports, Fannie Mae financed 16,801 units (that qualified for the low-income housing goal) in 5-50 unit properties in 2012 and 13,827 units in 2013. [7] (The 2014 figures for both GSEs are, of course, to-be-determined.) For Fannie Mae, the 2015 target is proposed to be 20,000 units in 2015 and increase to 30,000 units in 2017. Freddie Mac's Affordable Housing Tables show that it financed 829 units (that qualified for the low-income housing goal) in 5-50 unit properties in 2012 and 1,128 units in 2013. [8] The proposed 2015 small multifamily subgoal would be 5,000 units for Freddie Mac, and would increase to 15,000 units in 2017.

In light of historical performance, the jump reflected in the new small multifamily unit subgoal is considerable. We question the levels at which these subgoals have been set and the pace at which they would increase — which we do not view as "gradual." Taking Fannie Mae's 2013 production of 13,827 units and assuming that each property consisted of the maximum of 50 units, Fannie Mae would have financed at least 277 small multifamily properties. To meet the proposed 2015 subgoal of 20,000 units in small multifamily properties, again assuming all are at the maximum 50 units, Fannie Mae would be required to finance at least 400 small multifamily properties, which is a minimum growth rate of 44 percent from 2013 levels. Freddie Mac, under the proposed 2015 subgoal, would be required to finance at least 100 small multifamily properties, which is a minimum growth rate over 300 percent relative to 2013.

Second, we are concerned about the potential unintended consequences with the levels at which the new subgoal would be set. Banks, thrifts and credit unions appear to be a strong presence in the small multifamily market based on MBA's 2013 Annual Report on Multifamily Lending. With the smallest average loan size of all multifamily capital sources at $1.9 million in 2013, these depository institutions financed 35,631 multifamily loans. Should the new small property subgoal pressure the GSEs to be overly aggressive in competing in this market, the result could be a shift toward greater government-sponsored financing in this market, rather than promoting liquidity in markets that exhibit substantial capital scarcity. We recommend that FHFA take this dynamic into account in determining the levels at which the subgoal is set.

Third, as FHFA observes, the "challenges in providing financing for small multifamily properties include a lack of standardization, which can make the credit risk of small loans more difficult and time-consuming to assess."[9] The operational, market and credit risks specific to this property type should be carefully considered in setting the unit thresholds under the small multifamily subgoal, as overly-elevated targets could impact safety and soundness considerations.

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[7] Fannie Mae 2012 and 2013 Annual Housing Activities Reports and Annual Mortgage Reports.
[8] Freddie Mac 2012 and 2013 Annual Housing Activities Reports and Annual Mortgage Reports.
[9] 79 Fed. Reg. at 54498.

Fourth, as noted above, we believe that there should be parity between the two GSEs over time with the new small multifamily subgoal, along with a level playing field under other FHFA directives. The small multifamily subgoals themselves, therefore, should reflect such parity, be set at levels that take into greater account the historical performance of the GSEs, consider the capital sources that already serve the small property market, and incorporate the unique attributes of the small multifamily property market.

Manufactured Housing Rental Community Blanket Loans

FHFA requests comment on whether multifamily housing goals credit should be allowed for blanket loans on manufactured housing rental communities (MHCs). We note that FHFA has already encouraged the GSEs to finance MHCs by excluding MHC loans from the GSEs' volume caps in its 2014 Scorecard for Fannie Mae and Freddie Mac. We believe that loans on MHCs should count toward the affordable housing goals because they provide support for additional affordable housing options, particularly in non-urban settings. MBA therefore recommends that MHC loans be eligible for credit under the affordable housing goals.

Adjustment of Benchmarks Based on Market, Financial and Other Conditions

MBA recommends that FHFA monitor multifamily market conditions closely to determine whether any of the multifamily housing goals should be adjusted during the 2015-2017 period. We underscore that FHFA has discretionary authority to adjust the affordable housing goals in light of market and economic conditions, the financial condition of the GSE, or if the result could be contrary to the public purposes of the GSEs.[10] We support FHFA's ability, under the current regulations, to adjust the benchmark levels for the housing goals based on specified conditions and prior to requiring a feasibility determination following the end of the subject year.[11]

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MBA appreciates FHFA's thoughtful consideration of the affordable housing goals and their impact on the market and the GSEs. We look forward to engaging in further discussions with FHFA on these matters. If you have any questions, please contact Eileen Grey at egrey@mba.org and Tamara King at tking@mba.org.

Sincerely,

David H. Stevens
President and Chief Executive Officer

[10] Section 1334 of the Safety and Soundness Act, as amended by HERA.
[11] 79 Fed. Reg. at 54483.