FannieMae

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By Electronic Mail: RegComments@Ffhfa.gov

December 23, 2013

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20024

Re: Comments on Interim Final Rule – Suspended Counterparty Program; RIN 2590-AA60

Dear Mr. Pollard,

Fannie Mae is pleased to submit these comments in response to the Federal Housing Finance Agency's ("FHFA") October 23, 2013 Interim Final Rule ("IFR") on the existing Suspended Counterparty Program ("SCP"), which was established in June 2012. Under the SCP and IFR, Fannie Mae is required to submit reports to FHFA when it becomes aware that an individual or institution with which it is doing or has done business has committed fraud or other financial misconduct during a specified time period. FHFA then determines whether Fannie Mae and the other regulated entities should be prohibited from doing business with such individual or institution.

Fannie Mae has implemented processes and procedures to meet its obligations under the current program. However, Fannie Mae has concerns that certain requirements in the IFR may cause operational difficulties. In addition, Fannie Mae would appreciate clarification and confirmation around certain of the requirements.

I. Past Covered Transactions

Under the pre-IFR program, Fannie Mae was required to report on individuals and entities with whom Fannie Mae was currently engaged in a "covered transaction," defined as a contract or agreement. The IFR requires a regulated entity to submit a report to FHFA when it becomes aware that a person or any affiliate thereof with which the regulated entity is engaging *or has engaged in a covered transaction within the past three years* has engaged in covered misconduct.

Requiring Fannie Mae to report on misconduct involving persons or institutions with whom Fannie Mae no longer does business is an inefficient use of resources. For example, a Fannie Mae employee may learn of covered misconduct by a person and be aware that Fannie Mae had a contract with the person at some point, but not recall the exact timeframe. To require Fannie Mae to research whether any contract or agreement across the entire company terminated two or three or four years ago – where Fannie Mae is no longer engaged in a covered transaction with that person – appears to yield very little benefit and does not fulfill

the program's purposes. To the extent Fannie Mae is no longer doing business with the individual or institution, we question whether the individual's or institution's misconduct would have an effect on Fannie Mae's safety and soundness. And were Fannie Mae to enter into a new contract or agreement with such person in the future, Fannie Mae's current processes for vetting counterparties (which includes reviewing the FHFA Suspended Counterparty List) would assess any risk associated with past covered misconduct. Accordingly, Fannie Mae requests that reports under the program be limited to parties with whom Fannie Mae is currently engaged in a covered transaction.

II. Timing of Notification

The IFR requires Fannie Mae to submit notifications to FHFA within 10 days of becoming aware of reportable misconduct. Fannie Mae asks FHFA to confirm that this refers to calendar, as opposed to business, days. Fannie Mae also asks FHFA to consider providing 30 calendar days for notification. Under Fannie Mae's internal procedures, we are deemed to be "aware" of the reportable misconduct once the Financial Instrument Fraud Officer ("FIFO") is made aware. It is then the FIFO's responsibility to conduct a reasonable investigation and due diligence to confirm whether there is in fact covered misconduct and whether or not Fannie Mae is engaged in a covered transaction with the reported person or institution. Ten days is not sufficient for Fannie Mae to complete this due diligence; such investigation typically relies on public information that may not be available within such a short timeframe. For example, a report to the FIFO may be based on a newspaper article but the FIFO's due diligence would involve reviewing the plea agreement or court order specifying the terms of the misconduct.

III. Definition of "Covered Transaction"

The IFR broadens the definition of a "covered transaction" beyond a contract or agreement to include a "financial or business relationship between Fannie Mae and any person/entity and any affiliates thereof." Fannie Mae believes "financial or business relationship" is redundant of "contract or agreement" and proposes deletion of this term from the definition. To the extent the term is intended to capture something beyond a contract or agreement, Fannie Mae is concerned the term is too broad and ambiguous and seeks clarification of its parameters. For example, the term "financial or business relationship" could arguably be read to capture Fannie Mae's relationship with a provider like UPS because Fannie Mae may have an account (but not necessarily a contract or agreement) with UPS and pays UPS for delivery services. In this situation, we would not have a contract or agreement with the company, but we arguably have a "financial or business relationship." In contrast, the pre-IFR definition, covering any contract or agreement, is unambiguous and is tailored to achieve the objectives of the program.

Fannie Mae also seeks confirmation of its understanding, based on prior discussions with FHFA, that it is not required to screen individual REO purchasers with whom Fannie Mae enters into property purchase contracts against the FHFA suspended party list, because of the operational challenges associated with such screening. Fannie Mae will continue to screen pool investors.

FHFA requested comments on whether the definition should incorporate a reference to "lower tier covered transactions." Fannie Mae opposes such a reference if it would require the regulated entities to directly ensure that a suspended party does not indirectly do business with a regulated entity, such as by serving as a subcontractor. In implementing the SCP and in consultation with FHFA, Fannie Mae has proposed that it notify parties with whom it has a direct contractual relationship of their obligations to ensure that suspended parties do not participate in the Fannie Mae contractual relationship. Any further obligations imposed on

Fannie Mae to police such relationships would be operationally challenging given the complicated nature of Fannie Mae's business relationships.

IV. Definition of "Administrative Sanctions"

The IFR broadens the definition of "administrative sanctions" to include any action that limits an entity's ability to conduct business with a federal agency. Fannie Mae believes this change is appropriate and workable. FHFA requested comments on whether the definition should be further broadened to include actions by other regulators. It is ambiguous what these "actions by other regulators" would entail and therefore any broadening would either be redundant or ambiguous. We believe the definition in the IFR is sufficiently broad, addresses the purposes of the program, and needs no further expansion.

Fannie Mae appreciates the opportunity to provide these comments to FHFA. Please do not hesitate to contact me should you have any questions.

Sincerely,

Leslie Arrington
Vice President