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Lisa M. Ledbetter
Vice President and Deputy General Counsel
Legislative & Regulatory Affairs

Tel: (703) 903-3189
Fax: (703) 903-4503
lisa_ledbetter@freddiemac.com

8200 Jones Branch Drive
MS 211
McLean, VA 22102-3110

August 19, 2011

By email to RegComments@FHFA.gov

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

Attention: Prudential Management and Operations Standards; RIN 2590 – AA13

Dear Mr. Pollard:

Freddie Mac is pleased to comment on the proposed rule ("Proposed Rule") and guidelines published by the Federal Housing Finance Agency ("FHFA") on June 20, 2011¹ to implement section 1321 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008 ("HERA").

The Proposed Rule would establish prudential standards ("Proposed Standards") that address 10 separate areas relating to the management and operations of Fannie Mae, Freddie Mac and the Federal Home Loan Banks (collectively, the "regulated entities"). The Proposed Rule also addresses the possible consequences for a regulated entity that fails to operate in accordance with the prudential standards or fails to comply with the rule.

We believe the Proposed Rule and Proposed Standards are generally a well-balanced approach to implementing the HERA provisions on prudential standards. We have identified a few areas we believe could be revised to provide better clarity and certainty.

I. Responsibilities of Senior Management and the Board of Directors

The Proposed Standards indicate responsibilities of the senior management and boards of directors of the regulated entities that may not fully align with their traditional, normal roles and responsibilities. We are concerned that the Proposed Standards may interfere with the directors' ability to avail themselves of the protection of the business judgment rule under the laws of the applicable jurisdiction and could potentially affect our ability to attract and retain directors. Use of the terms "ensure," "responsible for ensuring," "ultimately responsible," and "ultimate responsibility" could suggest that the board of directors has more than an oversight role for certain actions and steps that are properly the responsibility of management. In addition, in some instances, the Proposed Standards indicate joint responsibilities of senior management and the boards of directors that would appear to blur the distinction between the roles accorded senior management and the board of directors.

¹ 76 Fed. Reg. 35791 (June 20, 2011).

We respectfully suggest clarifying the Proposed Standards to recognize that the board of directors is responsible for overseeing senior management, and that management has ultimate responsibility for the matters and steps set forth in the Proposed Standards. One way to provide this clarity is to replace the terms “ultimately responsible” or “ultimate responsibility” with “responsible for overseeing” or “oversight responsibility,” as appropriate. We suggest listing the responsibilities of management and the board of directors separately to provide greater clarity of roles. In addition, replacing the term “ensure” with language focused on oversight would recognize that the role of the board of directors is oversight rather than management. Finally, we respectfully request that each of the Proposed Standards recognize that the board of directors may delegate its oversight responsibilities under the Proposed Standards to an appropriate committee of the board of directors, as is expressly set forth in Proposed Standards 3 and 8.

We would also note that while management can take reasonable steps to establish, implement and monitor the matters set forth in the Proposed Standards, it is difficult to “ensure” such actions or requirements. Rather, management should have responsibility for “taking reasonable steps to address” each of the areas in the Proposed Standards.

II. Prudential Management and Operations Standards

Our comments on several of the Proposed Standards are set forth below.

Standard 1 - Internal Controls and Information Systems

Proposed Standard 1(2) states that the board of directors should approve and periodically review overall business strategies and “significant policies.” We suggest that FHFA limit the scope of the term “significant policies” to those policies on internal controls and information systems that are related to internal controls required to be approved by the Audit Committee of the board of directors pursuant to the Sarbanes-Oxley Act of 2002 and corporate governance rules of relevant listing exchanges.

We also suggest that Proposed Standard 1(3) regarding approval of a regulated entity’s “organizational structure” relate to an annual review of the organizational structure of the direct reports to the Chief Executive Officer, or that this provision be eliminated. Without greater clarity, management may be unduly restricted in its ability to manage the company, including decisions regarding reorganizations or shifting of personnel to address business needs.

Standard 2 – Independence and Adequacy of Internal Audit Systems

Proposed Standard 2(5) and the heading for this standard use the term “internal audit systems.” Because this phrase could suggest full automation of the internal audit process, for which some but not all parts of the process are automated, we suggest replacing the term “internal audit systems” with “internal audit function” as set forth in Proposed Standard 2(1) and 2(3).

Standard 7 - Investments and Acquisition of Assets

Proposed Standard 7(4) states that a regulated entity should have a board-approved policy governing acquisitions of other assets (i.e., assets other than investments), and that the policy should establish clear and explicit guidelines for asset acquisitions that are appropriate to the regulated entity's mission and objectives. We believe the scope of the policy that would satisfy this standard should be clarified.

Standard 10 - Maintenance of Adequate Records

Proposed Standard 10(4) provides that a regulated entity should "conduct a review and approval of the records management plan and records retention schedule for all types of records by the board of directors at least once every two years." It is unclear if this Proposed Standard indicates that the board of directors should approve the record management plan and records retention schedule, or if the plan and schedule required to be approved by management are just for records of the board of directors. We believe that if oversight by the board of directors is needed, the standard should provide for a briefing of the board of directors by management on the records management plan and records retention schedule.

III. Failure to Meet the Prudential Standards

The Proposed Rule addresses the possible consequences for a regulated entity that fails to meet any of the Proposed Standards. While the Proposed Standards are predominantly modeled on the comparable standards that apply to federally regulated financial institutions, there are several differences as described below.

Failure to Submit Corrective Plan, Proposed Section 1236.5

A. Section 1313B(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended ("FHEFSSA") states that, if a regulated entity fails to timely submit an acceptable plan or fails in any material respect (emphasis added) to implement an approved corrective plan, at a minimum, the Director of FHFA must order the regulated entity to correct the deficiency. The bank regulations also include a "material" qualifier. (See 12 C.F.R. § 30.4(d)).

While the preamble language to the Proposed Rule describes the regulatory text of section 1236.5(a) using the phrase "in any material respect,"² this phrase does not appear in the regulatory text. We respectfully request revision of the regulatory text of section 1236.5(a) of the proposed rule to add the phrase "in any material respect" between "fails" and "to implement or otherwise comply with an approved corrective plan".

B. Under Section 1313B(b)(2)(B) of FHEFSSA, the Director of FHFA has discretionary authority to order further sanctions, including limits on asset growth, requirements to increase the ratio of core capital to assets, or any other action that the Director determines will better carry out the

² 76 Fed. Reg. 35794. See also 76 Fed. Reg. 35792.

purposes of this section of the statute – to bring the entity into compliance with the standards. Section 1236.5(a) of the proposed rule expands the list of possible sanctions. This section of the rule also continues to reserve discretion for the Director to take any other action that the Director “determines will contribute to bringing the regulated entity into compliance with” the standards.

FHEFSSA requires the Director of FHFA to determine that such other discretionary actions “will better carry out the purposes of this section than any of the other actions described in this subparagraph [1313B(b)(2)(B)].” We respectfully suggest revising the regulatory text of section 1236.5(a) to include a comparative provision as set forth in FHEFSSA. This revision would be consistent with the preamble description to the Proposed Rule.³

C. Although the imposition of the additional sanctions described above generally is a matter of discretion for the Director of FHFA, the Director must impose at least one of the additional sanctions if the regulated entity has experienced “extraordinary growth” within the preceding 18 months. For the Enterprises (i.e., Freddie Mac and Fannie Mae), the proposed rule would generally define “extraordinary growth” as non-annualized growth of assets in excess of 7.5 percent over any calendar quarter that has occurred within the 18-month period prior to the date on which FHFA provides notification of failure to meet a prudential standard and requires submission of a corrective plan.

We respectfully suggest conforming the definition of extraordinary growth to that applied by the banking agencies, which appears to apply only to a bank that is not in the highest capital classification. This revision would be consistent with the preamble description to the Proposed Rule.⁴

To provide clarity regarding the meaning of the term “assets” in reference to “extraordinary growth,” we respectfully suggest defining the term in section 1236.2 to mean, in the case of the Enterprises, the mortgage-related investments portfolio as measured by unpaid principal balance (as disclosed on a monthly basis in the Monthly Volume Summary), which is what is used to measure compliance with the portfolio limit covenant in the Senior Preferred Stock Purchase Agreement with the Department of the Treasury.

Finally, we suggest adding an appeals process to provide a regulated entity with five business days’ notice of FHFA’s intent to impose such discretionary sanctions, after which the regulated entity would have a five business day period to submit information to FHFA showing that quarterly growth was due to market demands and consistent with safety and soundness. FHFA could then have a comparable time period to review and respond to the information provided.

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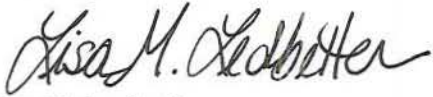
³ 76 Fed. Reg. 35794.

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Freddie Mac appreciates the opportunity to provide our views in response to the Proposed Rule and guidelines. Please contact me if you have questions or require further information.

Sincerely,

A handwritten signature in black ink that reads "Lisa M. Ledbetter". The signature is written in a cursive style with a large initial "L" and "M".

Lisa M. Ledbetter