March 16, 2011

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

Regarding: Alternatives to Use of Credit Ratings in Regulations, RIN 2590–AA40

Dear Mr. Pollard:

The Mortgage Bankers Association[1] (MBA) welcomes the opportunity to comment on the proposed rule[2] (Proposal) issued by the Federal Housing Finance Agency to provide an alternative to credit ratings for regulations that govern the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal Home Loan Banks (FHLB) (collectively, the Enterprises). The Proposal is intended to implement Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) which requires federal agencies to review their regulations to identify and remove references to credit ratings.[3] MBA supports the legislative intent of the Dodd-Frank Act of eliminating the overreliance on ratings for security purchase decisions. However, MBA also recognizes the extensive analysis that rating agencies conduct in the rating's process. Accordingly, MBA believes the legislative intent of the Dodd-Frank Act can be achieved by appropriately utilizing ratings in the purchase decision of securities.

Background

In addition to the requirement that federal agencies remove regulatory references to credit ratings, Section 939A of the Dodd-Frank Act also requires these agencies to substitute appropriate standards for determining credit-worthiness. The law further provides that, to the extent feasible, an agency should adopt a uniform standard of credit-worthiness for use in its regulations, taking into account the entities regulated by it and the purposes for which such regulated entities would rely on the credit-worthiness standard. At the conclusion of the review, each agency is required to transmit a report to Congress describing the modifications to its regulations that were made.

[1] 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, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

[2] 76 Fed. Reg. 20, 5292 – 5296, (Jan. 31, 2011).

[3] See section 939A, Public Law 111–203, 124 Stat. 1887 (July 21, 2010).

MBA notes that a number of regulations applicable to the Enterprises contain specific references to credit ratings issued by nationally recognized statistical ratings organizations (NRSROs) for purposes of assigning capital requirements or setting investment or counterparty exposure limits.

MBA Position

Consider Taking an Approach Similar to a Previously Proposed SEC Rule

MBA notes that reliance on NRSRO ratings in federal regulations has been an area of active interest of the federal regulatory agencies, including the Securities and Exchange Commission (SEC). In 2008, the SEC issued a proposed rule that would prohibit money market funds from relying on NRSRO ratings for securities purchase eligibility. Instead, the SEC proposal would require that the money market fund's board of directors determine that each portfolio investment present minimum credit risk and verify that the security is a "First Tier Security" or "Second Tier Security" for the purposes of the proposal. The board could then rely on its internal analysis or that of an outside source, including an NRSRO rating, if it determines the rating to be credible, to make the determination if the security was in the first or second tier. The proposal would require the management of money market funds to make their own determination relating to the credibility of the NRSRO ratings and if they should be used in the analysis process for identifying First and Second Tier Securities. This would require management to affirm an NRSRO rating versus using it as a qualification test. This rule was intended to address the lack of due diligence and the heavy reliance on NRSRO ratings by some purchasers.

The SEC proposal strikes the appropriate balance between securities purchasers performing independent due diligence without eliminating the substantial amount of due diligence and analysis that went into developing NRSRO ratings. MBA believes that such an approach would be consistent with the intent of the Dodd-Frank Act legislation of eliminating overreliance on NRSRO in securities purchase decisions.

In addition, recent regulations have been enacted that require the underlying property level data used in the ratings process to be provided to other credit rating agencies. This allows for non-solicited ratings to be compared with solicited ratings for discrepancies. This would serve as an important new check for the accuracy of solicited NRSRO ratings. MBA recommends that the agencies consider these approaches notwithstanding the Dodd-Frank Act's mandate to remove any reference to or requirement of reliance on credit ratings.

Increased NRSRO Ratings Transparency

MBA is mindful that the financial services system has witnessed a tremendous increase in the level of complexity and sophistication in financing options, investment products and liquidity channels. Consequently, MBA has strongly supported efforts to increase the transparency of the ratings process and reliability of ratings data.

In terms of increased ratings transparency, MBA believes the Proposal significantly increases the amount of public information and information made available to NRSROs in the following ways:

(1) Because underlying data used to issue a rating must be disclosed to other NRSROS, multiple ratings opinions can develop for each residential mortgage-backed security RMBS issue;
(2) 100 percent of ratings history will have to be disclosed within 12 months after its release for issuer-paid ratings for securities issued after June 25, 2007, and a random sample of 10 percent of all issuer-paid ratings;
(3) Enhanced rating transitions reporting;
(4) Enhanced record keeping of ratings performance;
(5) Reduced rating agency staff conflicts; and,
(6) Annual NRSRO reporting on rating activity.

MBA notes that NRSRO ratings methodologies and terminology are both publicly available on NRSROs' websites and/or in publicly available materials. In the case of RMBS, NRSROs publish a detailed explanation of their evaluation criteria. The publicly available data on NRSRO ratings methodology, coupled with increase NRSRO reporting requirements will materially improve the transparency of the ratings process and facilitate analytic assessment of ratings, thus improving its utility in the RMBS evaluation process.

Before moving forward with eliminating reliance on NRSRO ratings, MBA requests the FHFA to carefully evaluate the Proposal to determine if the increased NRSRO ratings transparency coupled with RMBS purchasers having to affirm NRSRO ratings would address the intent of Dodd-Frank Act of reducing the overreliance of rating in the RMBS purchase decision process.

MBA appreciates the opportunity to comment and request that you consider our concerns. Any questions about MBA's comments should be directed to Michael Carrier, Associate Vice President, Secondary and Capital Markets at (202) 557-2870 or mcarrier@mortgagebankers.org.

Sincerely,

John A. Courson

John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association