April 9, 2010

Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA26
Federal Housing Finance Agency
1700 G. Street, NW, Fourth Floor
Washington DC 20552

Dear Mr. Pollard:

The National Community Reinvestment Coalition (NCRC) appreciates that the FHFA seeks to preserve the Government-Sponsored Enterprises' (GSEs) role of leader in the market for low- and moderate-income borrowers and communities. The GSE role in financing affordable and responsible credit for traditionally underserved communities is more important than ever given the crippling impacts of the economic crisis on the ability of the private sector to lend. FHFA has struck a delicate balance between preserving the safety and soundness of the GSEs, establishing robust yet realistic goals in serving low- and moderate-income communities, and ensuring that the loans are responsible and not risky for underserved communities and the GSEs. Yet, NCRC encourages FHFA to further strengthen its proposed safeguards against unsustainable and irresponsible lending.

NCRC is an association of more than 600 community-based organizations that promotes responsible lending and investing in minority and low- and moderate-income communities across America. As such, we witness daily the benefits of responsible lending and battle the devastation caused by reckless lending. As the FHFA's data shows, the GSEs have not been major financiers of reckless lending, but clearly they could have exercised more due diligence in their purchasing of private label securities.[1] The FHFA's proposed rule in furthering GSE financing of affordable and sustainable homeownership and rental housing is thus extremely important to our member organizations and the communities they serve.

Single-Family Housing Goals

The proposed GSE affordable housing goals are an improvement over previous years' goals in that they target the same income populations as the Community Reinvestment Act (CRA). CRA requires banks to meet the credit needs of communities, especially low- and moderate-income borrowers and communities with incomes up to 80 percent of area median income. In previous, years, the GSE affordable housing goals allowed the GSEs to count loans for goal fulfillment that were issued to borrowers with incomes up to 100 percent of area median income. As a result, NCRC and the Department of Housing and Urban Development found that the GSEs

[1] The FHFA estimates that Fannie Mae and Freddie Mac have 57 percent of all outstanding mortgages in their portfolio but only 25 percent of all serious delinquencies. However, 90 percent of the GSEs' private label securities (PLS) holdings experienced a downgrade, Federal Register, Vol. 75, No. 38, February 26, 2010, p. 9059.

trailed banks in the percentage of loans they financed for borrowers with up to 80 percent of area median income.[2] Aligning the GSE goals with the CRA income limits will help insure that the GSEs do not trail the banks but lead the banks in serving low- and moderate-income borrowers with incomes up to 80 percent of area median income.

FHFA's targets for the single family affordable housing goals are reasonable. FHFA has two targets for each goal: a benchmark target based on a forecast, and an actual market share target based on the percentage of loans the primary market (banks and other lenders) made to the group of borrowers (such as low-income in the home purchase goal). FHFA proposes that if the GSE meets either the benchmark or the actual market share target, then the GSE is in compliance with the goal.

Both the benchmark and the market share target establish realistic targets for the GSEs based on the primary market. The feasibility of these targets for the GSEs is demonstrated by FHFA's analysis showing that the GSEs met the actual market target in most of the years from 2004 through 2008 for the goals. Yet, the GSEs were most likely to trail the primary market in 2008, which, of course, was a troubling year for the GSEs. Now that the GSEs are recovering from their financial difficulties, the FHFA should ensure that the GSEs rebound and perform as well as or better than the primary market in serving the borrower groups identified by the goals. It appears that the FHFA's benchmark and actual market share targets will keep the GSEs on pace with or leading the primary market.

NCRC appreciates that the FHFA includes minority communities in the low-income areas goal. Channeling responsible loans financed by the GSEs to minority communities is essential as a means to repair the damage associated with abusive lending and foreclosures that have disproportionately afflicted communities of color.

The FHFA is also correct to be proposing that mortgages with "unacceptable" terms must not count towards goal fulfillment but FHFA should strengthen its proposal of which terms and conditions constitute unacceptable mortgages.[3] FHFA, for example, proposes to prohibit mortgages from counting towards the goals if the mortgages violate the interagency guidance on nontraditional mortgages issued in 2006 or the interagency guidance on subprime mortgages issued in 2007. This guidance, however, lacked enforcement authority and was often unclear on prohibitions. For example, instead of prohibiting reduced documentation of income, the non-

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[2] Patrick Boxall and Joshua Silver, *Performance of the GSEs at the Metropolitan Level*, in Cityscape: A Journal of Policy Development and Research, U.S. Department of Housing and Urban Development, Volume 5, Number 3, 2001.

[3] NCRC had urged HUD repeatedly when HUD was developing housing goals rules over the years to strengthen prohibitions against abusive mortgages. Except for establishing sparse standards in 2000, HUD did not update these prohibitions.

traditional guidance states that "clear policies should govern the use of reduced documentation."[4] In addition, the non-traditional guidance states that "risk-layering features in loans to subprime borrowers may significantly increase risks for both the institution and the borrower." The guidance does not prohibit risk-layering which often consisted of qualifying borrowers based on a low-teaser rate, not establishing escrows, disregarding careful repayment analysis, offering high loan-to-value loans, and including prepayment penalties. The result was unsustainable loans that trapped borrowers because they could not afford to pay the steep prepayment penalties. The interagency guidance was ineffective in stemming problematic lending and preventing the foreclosure crisis.

Instead of basing the definition of unacceptable loans on the flawed interagency guidance, the FHFA should use the Federal Reserve's rule on Regulation Z and HOEPA issued in July of 2008. While still not srong enough, the Federal Reserve's update to Regulation Z is more rigorous than the interagency guidance and is an actual regulation that the primary market must follow. Regulation Z requires a stronger ability-to-repay analysis than the interagency guidance; specifically the Federal Reserve rule requires the analysis to be based on the fully-indexed and amortizing rate or the maximum monthly payment within the first seven years of step-rate loans. Escrows are also required by the Federal Reserve rule instead of the interagency's guidance recommendation of a mere discussion with the consumer about the risks of not including escrows in subprime loans.[5]

FHFA's proposal regarding prepayment penalties on goals qualifying mortgages also needs to be revised. The FHFA would allow a prepayment penalty on a goals qualifying mortgage as long as the consumer had a choice about whether to accept the prepayment penalty and if the prepayment penalty provided a benefit such as lowering the interest rate. In contrast, the Federal Reserve's Regulation Z rule disallows prepayment penalties if the rate or monthly payment changes within the first four years for a high-cost loan.[6] For other high-cost loans, prepayment penalties must expire after two years. The FHFA should adopt Regulation Z's prepayment restrictions for high-cost loans. For prime loans that are not adjustable rate loans, the FHFA can adopt its proposed prepayment restrictions.

NCRC supports the other FHFA proposals regarding unacceptable terms and conditions including excessive fees, loans with annual percentage rates above the Home Ownership and Equity Protection Act (HOEPA) triggers, financing of prepaid credit insurance, and failure to comply with fair lending requirements. The provision providing the FHFA with discretion to enumerate additional terms and conditions as unacceptable is necessary since markets and abusive practices evolve.

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[4] Interagency Guidance on Nontraditional Mortgage Product Risks, Federal Register, October 4, 2006, Vol. 71, No. 192, p. 58614

[5] Statement on Subprime Lending, Federal Register, Vol. 72, No. 131, July 10, 2007, p. 37574

[6] Regulation Z, Docket No. R-1305, Federal Register, Vol. 73, No. 147, July 30, 2008.

The FHFA should adjust its definition of high-cost loans in determining the size of the market for goal purposes. As proposed, the market (or total universe of loans) considered for the GSE housing goals excludes loans with rate spreads 300 basis points above the average prime offer rate. In the Federal Reserve's Regulation C, however, a high-cost, first-lien loan is defined as a loan with a rate spread of 150 basis points above the average prime offer rate. In order to be consistent with Regulation C and to steer the GSEs away from high-cost loans, the FHFA should adopt the Regulation C definition of high-cost loans.

NCRC supports the FHFA proposal to disallow private label securities from counting toward goal fulfillment. Private label securities (PLS) were riddled with problematic loans, inflated credit ratings, and negligent due diligence. In addition if PLS revive, it is questionable whether the GSEs should be involved with PLS to any significant extent since PLS was essentially a private market financial activity that did not need GSE support. The FHFA should therefore steer the GSEs away from PLS. The FHFA asks about an alternative approach, specifically whether any mortgages in PLS should count towards the goals if a senior officer of a GSE confirms that the mortgages are not "unacceptable" as discussed above. NCRC does not believe that this alternative approach would adequately resolve due diligence concerns nor would allow PLS to be primarily a private market activity.

Multifamily Goals

NCRC supports the FHFA's re-structuring of the multifamily goals to focus on low-income renters with incomes below 80 percent of area median income and very low-income renters with incomes below 50 percent of area median income. Expressing the goals in terms of units rather dollar amounts makes more sense in that it is easier to determine how many low- and very low-income renters will be served and to compare this level with overall demand for and supply of renter housing for this population.

The FHFA targets for 2010 and 2011 appear to be quite low in comparison with GSE levels in previous years. For instance, the FHFA establishes 237,000 and 215,000 units for Fannie Mae and Freddie Mac, respectively, under the low-income multifamily goal for the years 2010 and 2011. In 2008, however, Fannie Mae financed 448,075 units and Freddie Mac financed 275,683 units under this goal. Likewise, the FHFA is proposing 57,000 units for Fannie Mae and 28,000 for Freddie Mac under the very low-income multifamily unit goal in 2010 and 2011. These targets, however, are 61 percent of the units financed in 2008 by the GSEs under this goal.

The FHFA describes in detail the collapse of the multifamily lending market and suggests that the GSEs are now the "principal source" of financing for this market. In addition, the FHFA discusses how Freddie Mac must find another means of financing multifamily units now that its primary mechanism, commercial backed mortgage securities, is being used much less in the marketplace. Because the GSEs are now the principal source of financing rental housing for families of modest means, it behooves the FHFA to push the GSEs to remain as market leaders. Establishing goals that are about half of previous years' funding levels do not make sense in this

context. The national need for affordable rental housing will only grow due to the foreclosure crisis. The GSEs should be motivated to take and maintain a leading role in financing this pressing housing need.

Conclusion

The FHFA's single family goal targets are reasonable but the FHFA should improve upon the multi-family targets in order to encourage the GSEs to address the lack of affordable rental housing. The FHFA has appropriately required that loans qualifying for the goals should be subjected to a consumer protection screen and that any loans that do not pass the screen's criteria shall not count toward goal fulfillment. Yet, the FHFA's consumer protection screens need to be bolstered significantly.

NCRC thanks the FHFA for providing this opportunity to comment on the proposed goals for 2010 and 2011. If you have any questions, please contact me or Josh Silver, Vice President of Research and Policy on 202-628-8866.

Sincerely,

John Taylor
President and CEO