April 12, 2010

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General Counsel
Federal Housing Finance Agency
1700 G Street, NW
Fourth Floor
Washington, DC 20552

RE: RIN 2590-AA26 – 2010-2011 Enterprise Affordable Housing Goals; Enterprise Book-Entry Procedures

Dear Mr. Pollard:

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to provide comments on the Federal Housing Finance Agency's (FHFA) proposed regulations (Proposal) regarding affordable housing goals for the government sponsored enterprises (Enterprises) Fannie Mae and Freddie Mac.[2] The Housing and Economic Recovery Act of 2008[3] (HERA) requires the FHFA to establish annual housing goals with respect to the mortgage purchases by the Enterprises effective for 2010 and 2011.

Summary of MBA Position

Notwithstanding their conservatorship status, MBA believes the Enterprises should continue to fulfill their core statutory purposes. Like the FHFA, we believe the Enterprises should not undertake uneconomic or high-risk activities in support of the goals in light of their market distorting tendencies.

MBA notes that the administration is planning to issue a specific strategy for the future of the Enterprises post-conservatorship later this year. The FHFA also stated that the post-conservatorship status of the Enterprises will likely involve congressional action.[4] As a result, the current characteristics, purpose and need for the Enterprises' affordable housing goals, if not the Enterprises themselves, may be different post-conservatorship.

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[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 2,400 companies, including 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] 75 FR 9034 – 9072 (Feb. 26, 2010).

[3] Pub. L. 110-289, 122 Stat. 2654 (July 30, 2008).

[4] Federal Housing Finance Agency Report to Congress 2008, 3, (May 18, 2009).

Therefore, MBA's comments relate exclusively to the Proposal within the context of the current environment and powers of the Enterprises. MBA also has developed comprehensive recommendations[5] regarding the post-conservatorship role of the government and private sector in the secondary market, including mission-related obligations.

Moreover, the near-term condition and characteristics of the housing market make benchmarking very difficult. Until conditions change, the methodology for calculating affordable housing goals should be the same for multifamily and single family affordable goals, and stated as a percentage of the respective Enterprise's multifamily loan purchase volume. The proposed multifamily goals are too precise for these uncertain times. This could require resetting the goals more than once during the production years. MBA does not think this should be the outcome of goal setting. The primary objective in this transitional year should be to maintain the Enterprises' role providing liquidity for residential properties until the market improves when decisions about their larger role can be made.

Background

HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 to provide for the establishment, monitoring and enforcement of new affordable housing goals effective for 2010 and 2011 for Fannie Mae and Freddie Mac. HERA requires FHFA to establish three single-family owner-occupied purchase money mortgage goals and a single-family refinancing mortgage goal. The law also requires FHFA to establish a multifamily special affordable housing goal, as well as providing for a multifamily special affordable housing sub goal.

The Proposal establishes new affordable housing goals for 2010 and 2011, consistent with HERA's mandates. The Proposal also revises the rules for counting mortgages for purposes of the affordable housing goals to ensure clarity and consistency with the new goals.

In previous years, the performance of the Enterprises relative to their affordable housing goals was measured in the form of a percentage. For single family goals, the numerator is the number of loans an Enterprise bought (or, for rental properties, the number of dwelling units financed by a loan an Enterprise purchased) that meet a goal, and the denominator is the total number of loans the Enterprise bought (or, for rental properties, the number of dwelling units financed by a loan purchased by an Enterprise) in a year. FHFA sets the goals as percentages. If an Enterprise's fraction is equal to or greater than the percentage that FHFA sets for a goal, the Enterprise has met its goal. We believe that both single family and multifamily goals should continue to be measured using this methodology.

[5] See http://www.mortgagebankers.org/advocacy/issuepapers/ceml.htm.

Benchmarking

Lowering the definition of “low income” for 2010 and 2011 from 100 percent of area median income (AMI) to 80 percent AMI is a practical response to the need for affordable housing choices. For goal setting, the MBA supports using the lower AMI of 80 percent adjusted for family size for targeting because it recognizes that the growing affordability gap in the nation’s housing market is felt more below the 80 percent range of AMI than the 100 percent AMI range.

There is much uncertainty in trying to forecast the size of the rental market and the affordable subset of that market. For example, we believe that market conditions in 2010 and 2011 could turn out to be dramatically different than in 2008 and 2009. Annual multifamily starts hit a low point in January, dropping to 100,000 units. Were that trend to continue, the supply of rental housing could be short of demand if the economy recovers, jobs are added back, and households increase as early as 2012. The risk is that the shortage would impact lower income families, i.e. there would be fewer units for more families in the income ranges targeted to be helped by the proposed affordable goals.

Because economic and housing conditions appear to be improving, it is unclear if the proposed combined Enterprise multifamily goal of 452,000 rental units for low income households is adequate or excessive. This could be further complicated because 2010 is the first year that FHFA will oversee affordable housing goals production, reporting, and the methodology used to measure performance changes. MBA believes it makes more sense to use the same approach for multifamily goal setting as is proposed for single family, i.e. measure the share of qualifying units against each Enterprise’s annual multifamily volume in 2010 and 2011.

Statutory Core Goals

MBA has supported affordable housing goals for the Enterprises within their current statutory framework. This was appropriate when housing costs were rising much faster than incomes. It is as appropriate in the current economic climate because as rents start to increase while incomes and employment lag, an unprecedented number of households are unable to meet the current credit and income requirements for buying a home or renting an apartment. If credit standards must tighten to reflect continued weaknesses in loan portfolios, families in the proposed income range for affordable goals will have fewer housing choices. Until there is better balance between incomes and housing costs, setting goals for reaching more households at lower incomes is important.

Enforcement is Key

Given the current statutory framework of the affordable housing goals, and the Enterprises generally, MBA believes the goals play an important role when markets are faced with weak prices, low liquidity and tight credit standards. Fewer borrowers qualify in this lending climate, and fewer loans pencil out. Just like a surge in rents hurts low and moderate income households more because they have less to spend on housing, transportation, medical, clothing, school and food costs, the tightening of credit standards by the Enterprises drives down availability because fewer households meet tests for renting and/or buying. If goals are not enforced, the impact is felt at the lower end of the income scale.

MBA requests that FHFA consider clarifying the procedures for certifying and nullifying an approval. MBA firmly believes measures should be established to ensure the Enterprises submit accurate, truthful and complete information. Nevertheless, it is important that enforcement protocols not be so daunting that they discourage innovation. FHFA should take caution when articulating offenses and the appropriate penalties to ensure that the penalties are severe when the misconduct is willful or material and lesser offenses due to error or omission are not overly penalized.

Repurchase of Home Loans

During the past year, the Enterprises have intensified their level of scrutiny of nonperforming home loan documents. As a result, lenders have experienced a significant increase in the amount of home loans they are required to repurchase for representation and warranty infringements. Under the current housing goals regulations, the Enterprises receive credit for any home loan purchase that meets the regulatory criteria, no matter what happens to that loan in the future. MBA believes this misconstrues the Enterprises' affordable housing goals performance, particularly because goals-eligible home loans generally have a higher risk of default than other home mortgages.

MBA believes the FHFA should not permit the Enterprises to claim credit for affordable lending while they transfer the resulting credit losses on home loans to others. MBA believes that when an Enterprise requires a lender to repurchase a home loan for which the Enterprise received credit under an affordable housing goal, the credit should be reversed by subtracting it from the number of home loans counting toward the goal.

MBA recognizes that the default may occur in a later year than the Enterprise's original purchase of a home loan. Because it would be impractical to reverse the credit retroactively to prior year calculations, MBA believes a more effective and streamlined solution would be to remove the credit in the year of repurchase.

Other Proposed Qualifying Multifamily Activities

In the past, only when small loans were made a part of the Enterprises' affordable housing goals did they go after this business. The MBA believes the current market for financing small loans and small properties is hurt by the corollary weakness in local lenders, thrifts and savings banks. Small rental properties fill an important need for affordable housing in many older cities where properties under 50 units and loan sizes under $3 million ($5 million in high cost markets) are the predominant form and size of loans – more prevalent than properties over 50 units. Given that so much of the financing for small loans is done locally, the Enterprises should be tasked to play an active role ensuring mortgage liquidity in support of small property and small loans.

Although the MBA agrees that CMBS and low income housing tax credit (LIHTC) equity investments should be non-qualifying activities under these affordable goals rules, we believe FHFA should reconsider subordinate debt as a qualifying activity. The gap in financing needed by affordable projects has widened, especially as a result of the exit by the Enterprises as investors in LIHTCs. Many states are unable to fill the gap because their own public subsidies have dried up. Subordinate debt is needed to fill the financing gap, and should be added back to the list of goals-qualifying products.

Conclusion

While the housing finance crisis is far from over, MBA believes the economic climate would be considerably worse were it not for the role of the Enterprises in providing liquidity for housing finance, and their careful oversight by the FHFA. In light of the recent evidence of recovery in the financial sector, we urge the FHFA to implement the Proposal in a manner that minimizes market distortion. We request that you consider the modifications suggested above, and look forward to addressing any questions you may have.

Sincerely,

John A. Courson

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