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July 21, 2010

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

Re: Federal Housing Finance Agency
12 CFR Part 1282
RIN-2590-AA27
Enterprise Duty to Serve Underserved Markets
Notice of Proposed Rulemaking; Request for Comments

Dear Mr. Pollard:

On behalf of the National Association of Home Builders (NAHB), I would like to submit comments on the above-referenced notice, published in the *Federal Register* on June 7, 2010. NAHB is a Washington-based trade association representing more than 175,000 member firms involved in all aspects of residential construction, including the building, operation, and management of affordable rental properties. NAHB is also affiliated with more than 800 state and local associations. NAHB, its members, and its local building industry associations all have a strong interest in the activities of Fannie Mae and Freddie Mac because they are critical components of the nation's housing finance system, playing a vital role in maintaining mortgage market liquidity and stability and promoting affordable housing.

Background

The Housing and Economic Recovery Act (HERA) established a duty for Fannie Mae and Freddie Mac (the Enterprises) to serve three underserved markets: manufactured housing, affordable housing preservation and rural areas. The purpose of establishing the duty to serve requirement is to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing in those markets. The Enterprises are required to provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low- and moderate-income families with respect to manufactured housing, affordable housing preservation and rural markets.

HERA requires the Federal Housing Finance Agency (FHFA), which also has responsibility to establish, monitor and enforce the affordable housing goals for the Enterprises, to determine the characteristics and types of transactions and activities that should be considered and how such transactions and activities should be evaluated and rated for purposes of the duty to serve requirement. However, any activity related to the duty to serve requirement must be consistent with the Safety and Soundness Act and the safe and sound operation of the Enterprises, and the public interest.

FHFA commenced rulemaking for the duty to serve requirement with an Advance Notice of Proposed Rulemaking (ANPR) in August 2009. FHFA received 100 comment letters in response, including a letter from NAHB. FHFA reviewed those comments and is now proposing rules for the duty to serve, as well as requesting further comments on a number of issues.

Underserved Markets

Manufactured Housing

FHFA previously requested comments regarding the advisability of considering personal property loans that are secured by manufactured housing for the purposes of the “duty to serve” requirements under the Safety and Soundness Act. FHFA also requested comments regarding the relative advantages and disadvantages of personal property loans secured by manufactured housing as compared to land-home loans and/or real estate loans where manufactured housing is titled as part of the real estate.

FHFA is now proposing that only loans titled as real property be considered towards the Enterprises’ duty to serve. FHFA cites as its reasons the absence of ongoing business activity of purchasing chattel loans by the Enterprises, lack of operational capacity and lack of risk management processes in place for such loans.

NAHB Comments

NAHB concurs with FHFA’s position. NAHB does not believe that the Enterprises should engage in the purchase or guarantee of personal property loans of any type, including those that are secured by manufactured housing. Manufactured housing units that are not titled along with the real estate to which they are permanently sited depreciate rapidly once they are moved from a dealer’s sales lot. The loss of resale value would make recovery of value following a default very problematic.

Affordable Housing Preservation

The Enterprises are required to develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very

low-, low-, and moderate-income borrowers, including housing projects subsidized under the following programs:

- Section 8 project-based and tenant-based rental assistance;
- Section 236 rental and cooperative housing;
- Section 221(d)(4) new construction and substantial rehabilitation rental housing;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities;
- McKinney-Vento Homeless programs;
- Section 515 rural rental housing;
- Low Income Housing Tax Credits (LIHTCs) under Section 42 of the Internal Revenue Code;
- Comparable state and local affordable housing programs.

FHFA discusses the various ways the Enterprises can assist in affordable housing preservation through the above programs, as well as mentions a variety of other state and local programs, such as mortgage revenue bonds and the Neighborhood Stabilization Program (NSP). FHFA proposes to specifically include the NSP as an eligible state and local affordable housing program for purposes of the duty to serve the affordable housing preservation market. FHFA invites further comments on other potential sources of affordable housing as part of the Enterprises' duty to serve.

NAHB Comments

NAHB previously commented that the Enterprises can assist with the preservation of affordable rental housing by providing both debt and equity for preservation loans. Up until two years ago, the Enterprises were significant purchasers of LIHTCs. To the extent that either or both Enterprises are able to re-enter the LIHTC market, more investment in preservation projects would be desirable. In this proposed rulemaking, FHFA states that neither Enterprise has a business reason to invest in LIHTCs because they are in conservatorship. However, NAHB notes that the Enterprises can still provide debt financing for LIHTC developments, and we urge FHFA to acknowledge debt financing for such properties as an important way for the Enterprises to meet this duty to serve requirement.

NAHB previously commented that the Neighborhood Stabilization Program (NSP), as well as other state or local foreclosure prevention programs, should be eligible for consideration towards meeting the duty to serve the affordable housing preservation requirement for both single-family and multifamily properties. The Enterprises could work with recipients of NSP funds, such as national nonprofits, local governments or other groups, to purchase these loans. NAHB is pleased that FHFA agrees and will count such activities towards the duty to serve affordable housing preservation.

NAHB also believes that the Enterprises have an important role to play related to supporting state and local affordable housing programs and initiatives. Rarely does an affordable housing development use only one source of financing, and sometimes no federal source is used at all. NAHB suggests that to provide maximum flexibility to the Enterprises, any affordable housing preservation activity that meets the requirements of the Community Reinvestment Act (CRA) also be deemed eligible as an activity that meets the duty to serve requirement for affordable housing preservation and/or for rural markets, assuming the appropriate geographical location. All of the suggested state and local programs listed in the notice of proposed rulemaking would merit CRA consideration. The purposes of the CRA and the Enterprises' duty to serve intersect, and linking the two may provide mutually beneficial incentives to financial institutions and the Enterprises to work together as they seek to fulfill their obligations in this regard.

Rural Markets

The Enterprises are required to develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families in rural areas. FHFA notes that while HERA enumerates specific housing programs for the Enterprises to assist to fulfill the duty to serve for affordable housing preservation, it did not prescribe specific programs for the purposes of the duty to serve rural markets. Thus, FHFA says the Enterprises have latitude to address the needs of rural markets.

FHFA expects the Enterprises to evaluate their current activities in rural areas and opportunities to increase those activities to address liquidity needs. Increasing the number of lenders willing to use the Enterprise products and purchasing loans assisted or guaranteed by the USDA or purchasing other residential mortgages would qualify for consideration under this duty to serve.

FHFA also notes that some rural areas with very high median incomes may lack affordable multifamily housing for lower-income workers employed there. FHFA is seeking comments on what assistance the Enterprises might be able to provide in these areas for purposes of the duty to serve rural markets.

NAHB Comments

NAHB again notes that the Enterprises have had mixed success in the past in purchasing loans for affordable rural rental properties due to the difficulty of identifying lenders willing to participate. NAHB believes that the Enterprises should put significantly more effort into cultivating relationships with rural lenders, including state housing finance agencies, and developing or modifying products to facilitate more participation by the Enterprises. Because rural loans tend to be small, more could be done to facilitate aggregating these loans for sale, which would reduce transactions costs and make the loans more attractive to investors.

Although HERA did not enumerate specific programs that would qualify as eligible for consideration for the duty to serve rural markets, and FHFA suggests it is not necessary as long as the criteria for eligibility are met, NAHB nonetheless suggests that FHFA consider establishing a “safe harbor” list of programs that would automatically be considered. NAHB members have found that the less ambiguity there is related to establishing the eligibility of an activity for any particular program, the better. Obvious choices for a “safe harbor” list would include all of the programs enumerated for the affordable housing preservation duty to serve, plus the USDA single-family mortgage loan programs, multifamily direct and guaranteed loan programs and the USDA rental assistance program.

Regarding rural areas with high median incomes that may lack affordable multifamily housing for lower-income workers employed there, NAHB believes that it is appropriate for the Enterprises to play a role in supporting affordable workforce housing. However, these activities should be properly targeted, with the benefits of the activity clearly accruing to appropriate income groups.

Definition of Rural Areas

In the ANPR, FHFA pointed out that currently “rural areas” are defined in connection with the underserved areas affordable housing goal. That definition expired on January 1, 2010, because HERA replaced the previous housing goals with new housing goals. FHFA offered three options for defining “rural areas,” but did not suggest using the definition used by the U.S. Department of Agriculture (USDA), which is the definition contained in the U.S. Housing Act of 1949.

FHFA is now proposing to use the definition of “rural” as contained in the U.S. Housing Act of 1949. FHFA proposes this definition of “rural” because rural housing practitioners and USDA use it, and its adoption would obviate the need for practitioners to adapt their practices and systems to fit a new definition. The definition is also maintained by the USDA and would not require updating by FHFA with successive censuses.

FHFA notes some operational concerns for the Enterprises and FHFA if the USDA definition of “rural” is adopted, one of which is how to code rural/urban designations. FHFA also requests comments on whether tribal lands and colonias should be included in the definition of “rural” areas and how to define colonias. Not all tribal lands are encompassed within the USDA definition of “rural,” but very-low, low- and moderate-income families in these areas face unique housing challenges.

NAHB Comments

NAHB supports the use of the USDA definition of “rural” areas, as proposed by FHFA. As NAHB previously commented, the USDA classification has been established for some time, so the lending community already has considerable experience with it. The USDA definition is also appropriate, because it has been

developed specifically for the purpose of targeting mortgage lending to areas that are unlikely to be adequately served by institutions and programs with an urban focus.

NAHB agrees that tribal lands and colonias face unique housing challenges and supports inclusion of these areas under the definition of “rural.”

Evaluating and Rating Performance

The proposed rule would require the Enterprises to submit an underserved markets plan which will cover a two-year period. This plan is similar to a “strategic plan” under the Community Reinvestment Act (CRA), but this plan is mandatory. The Enterprises would have to specify benchmarks and objectives to achieve a rating of satisfactory for each factor.

FHFA would consider four factors in determining whether the Enterprise has complied with the Duty to Serve. The four factors are:

- Loan product factor: The development of loan products, more flexible underwriting guidelines and other innovative approaches to providing financing to the underserved markets. Research and development activities that are necessary for long-term planning and development would be eligible activities, as long as they meet all other requirements set forth in the proposed rule.
- Outreach factor: The extent of outreach to qualified loan sellers and other market participants in each underserved market.
- The loan purchase factor: The volume of loans purchased by the Enterprise in each underserved market relative to the market opportunities (but no quantitative targets may be set and the evaluation cannot be based solely on the volume of loans purchased).
- Investments and grants factor: The amount of investments and grants by the Enterprise in projects which assist in meeting the needs of the underserved markets.

FHFA would give the Enterprises the option, in their plans, of selecting within each underserved market particular programs to emphasize in a particular year. The Enterprises' plans would have to articulate the reasons for choosing these particular programs.

FHFA would evaluate the Enterprises' performance on each factor and assign a rating of satisfactory or unsatisfactory. The proposed rule contains discussion on the assignment of weights for each factor and how the Enterprise would achieve a satisfactory performance. This is similar to the method used by regulators to determine compliance with the CRA. FHFA states that this approach was generally supported by commenters responding to the ANPR (including NAHB). Based on the ratings on each factor, the Enterprise would be given an overall rating of “in compliance” or “noncompliance.” FHFA is soliciting comments on

whether the assigned ratings for each factor should be limited to satisfactory or unsatisfactory or have possible ratings such as outstanding or marginal.

In terms of weighting the factors, FHFA is proposing that the loan purchase and outreach factors receive significant weight in FHFA's evaluation, as loan purchases are the core business of the Enterprises and outreach activities are essential in attracting lenders to the underserved markets. FHFA says that it will consider the loan products factor but that while the Enterprises are in conservatorship, they will not be permitted to develop new products to meet the duty to serve. However, the Enterprises may engage in new activities that are substantially similar to existing activities approved by FHFA. The Enterprises may also modify underwriting guidelines for existing loan products, consistent with safety and soundness and the requirements of the conservatorship. Lastly, because the Enterprises are in conservatorship, FHFA states that the investments and grants assessment factors would receive little or no weight.

NAHB Comments

NAHB generally supports the underserved markets plan as proposed by FHFA. NAHB suggests that the Enterprises would have more incentive to work harder towards the goals if the ratings categories were expanded to include outstanding and marginal, in addition to satisfactory and unsatisfactory. Adding these additional categories also would assist FHFA and stakeholders to identify areas for improvement.

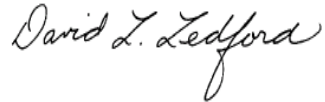
Although we recognize that the Enterprises cannot assist every single program enumerated in the proposed rule every year, FHFA should ensure that the Enterprises do not avoid certain programs because they present more difficult challenges in terms of underwriting requirements or attracting new lenders or other factors. NAHB also suggests that, because the duty to serve requirement encompasses serving very low-, low- and moderate-income families, FHFA should ensure that the Enterprises do not overly concentrate on the activities and programs that serve higher income families.

NAHB generally supports a higher weight for loan purchases and outreach activities, as proposed by FHFA. Outreach activities are particularly important in rural areas, and as we commented earlier, the Enterprises have shown limited success in this area in the past. While we understand that the Enterprises will not be permitted to undertake new activities, we are concerned that they will not be motivated to test changes in underwriting guidelines or eliminate identified obstacles that could present service to underserved families, unless the loan product factor is weighted appropriately. The need to focus on safety and soundness overrides all of the Enterprises' activities at present, which means they will be reluctant to deviate from "tried and true" standards that do not pose any new perceived risk. We urge FHFA to consider this issue in determining the weighting for the loan product factor.

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NAHB appreciates the opportunity to provide comments to FHFA on the Duty to Serve Underserved Markets for Enterprises Proposed Rulemaking. If you have any questions, please contact Claudia Kedda, Director for Multifamily Finance, at ckedda@nahb.com or 202.266.8352. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "David L. Ledford".

David L. Ledford
Senior Vice President
Housing Finance and Land Development