NATIONAL HOUSING TRUST

July 22, 2009

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590–AA27
Federal Housing Finance Agency,
1700 G Street, N.W., Fourth Floor
Washington, DC 20552

Dear Mr. Pollard:

The National Housing Trust is a national nonprofit organization that focuses on the preservation and improvement of existing rental housing that is affordable to the nation's lowest-income households, including households that include elderly or disabled individuals. The Trust has directly developed or provided technical assistance or loans to preserve and improve over 22,000 affordable apartments. The Trust welcomes the opportunity to provide comment to the Federal Housing Finance Agency (FHFA) on the Notice of Proposed Rulemaking published on June 7 and to expand upon some of our earlier comments regarding the duty to serve provisions of the Housing and Economic Recovery Act of 2008 (HERA) as it applies to the Government Sponsored Enterprises (GSEs) Fannie Mae and Freddie Mac.

Impact

These comments are in response to FHFA implementation of the "Duty to Serve" elements of HERA as they apply to Fannie Mae and Freddie Mac. Given the likelihood of future changes relating to GSEs, we believe these duties should apply to all entities that participate in the secondary mortgage market and/or that bundle, securitize, and sell mortgage backed securities.

Preservation means that these properties will continue to be affordable to households at the same income levels are current households for a period at least as long as the full term of the mortgage products offered for their acquisition and/or rehabilitation. If the property receives state or federal subsidies to assure affordability, the GSE product should encourage the borrower to accept such subsidies so long as they are available. Participation in conventional financing for rental properties serving moderate income households is also important, but does not substitute for and should not be counted toward the need to provide products and services to preserve and expand the inventory of rental properties serving low-income, very low-income, and extremely low-income households.

Market segment

The proposed rule § 1282.33 enumerates HUD housing programs for which preservation activities are relevant. HERA included a reference to the 221(d)(4) program, but the Below Market Interest Rate program for moderate-income families is found in the 221(d)(3) program. The FHA 221(d)(4) program is used for both affordable and market rate properties. Activities that help to preserve the affordability of 221(d)(3) properties should be rewarded, but 221(d)(4) properties without project based rental assistance should not be included. The need to preserve affordable rental housing is particularly acute for assisted housing that serves the poorest households. We therefore ***urge that the final rule include credit for other HUD-assisted properties that serve low income renters.***

The enterprises should encourage and be rewarded for efforts to support the acquisition, preservation, and improvement of both subsidized and unsubsidized properties, including state mortgage subsidies, state low income housing tax credits, tax exempt bonds, and public housing involving mixed finance redevelopment.

In the current market environment, ***particular attention should be given to properties at risk of possible conversion as a result of default*** over the next 36 months and opportunities to establish or preserve affordability in those properties in the long term. This approach might be particular effective in dealing properties owned or which come into the portfolios of the GSEs.

Included Activities

We note FHFA's current policy of not approving any innovative or new credit products for either Enterprise during the Conservatorship. We believe it is important in fulfilling both congressional intent and in meeting the needs of low and moderate income households that some ***innovation not only be permitted but encouraged***.

NHT is specifically concerned that FHFA may be restricting the existing activities of the GSEs to serve preservation. For example, NHT has been informed that the GSEs have been prohibited from issuing or renewing lines of credit to CDFIs for preservation investments or loans to CDFIs. Such lines of credit are exactly the type of activity that allow the GSEs to partner with strong and capable preservation-oriented lenders to expand sources of credit for smaller properties or other properties that require project-specific underwriting. ***FHFA should actively support predevelopment and bridge lines of credit to CDFIs*** to foster preservation.

The Trust supports efforts to stabilize residential housing markets as part of the Neighborhood Stabilization Program (NSP), and we welcome FHFA's intention to recognize that effort. However, since NSP efforts extend across the range of affordability and often focus on single-family and owner-occupied housing, ***NSP activities should not be considered as contributing to affordable housing preservation except to the extent that they result in the preservation of***

affordable rental housing. Depending on the nature of the particular activity, other NSP activities might be included toward the goal of assisting underserved markets.

We also support the inclusion of ***activities to support energy efficiency improvement to affordable rental housing***. For example, this could include special financing products for making energy efficiency improvements to affordable rental housing on terms that are the same or better than those offered to "green" conventional market properties.

Low Income Housing Tax Credit Properties

We believe that the enterprises can and should continue to play an important role in supporting properties in the LIHTC program. In the current market, we ***urge that the GSEs receive credit toward the duty to serve when they donate, transfer, or sell their ownership interests in tax credit properties*** to a nonprofit owner for the purpose of continued affordability of the property.

NHT supported the decision earlier this year to disapprove the proposed sale of Fannie Mae's tax credit portfolio. However, we feel that the most important reason to disapprove this sale was overlooked: that it could have had a strong destabilizing effect on the LIHTC program at a time of extreme vulnerability in the LIHTC market. We ***urge FHFA to evaluate future proposals with a particular focus on the potential impact to the tax credit market and the continued shortage of affordable housing*** for those at the lowest income levels.

The Enterprises could serve an important role by ***introducing a secondary market for LIHTCs***. The expertise in tax credit risk and compliance management built up by the GSEs over the years provides a unique capacity for launching a trading mechanism and a guarantee program that would allow the more efficient transfer of tax credits flowing from seasoned properties. We urge FHFA to work with Fannie Mae and Freddie Mac to bring this important service to the market.

Underwriting

In response to comments from NHT and others, Fannie Mae (last December) and then Freddie Mac (earlier this year) dropped their requirement for significant transition reserves for the so called ***"Section 8 appropriations risk,"*** allowing significantly more of the loan amounts approved by the GSEs to be put directly into preserving at-risk properties, rather than creating what were in effect loan loss reserves financed by the borrower. We commend these changes. However, we disagree with the characterization that this would reflect "less rigorous underwriting assumptions." In fact, underwriting would be no less "rigorous" and would likely require greater analysis, but would incorporate assumptions about future Section 8 subsidies that are different from past assumptions in a way that makes it possible for more debt to actually be used for preserving affordable housing, rather than capitalizing reserves for the purpose of reducing GSE exposure to risk that is, in fact, unmeasurable and highly subjective.

Since properties under 50 units serve such a large portion of the low-income renter population but have been difficult to serve, we recommend that FHFA ***encourage the enterprises to make equity or debt investments in CDFIs to invest in preserving and rehabilitating smaller rental properties***, and also to ***develop streamlined processes for underwriting debt on smaller properties that lower the transaction costs*** for these smaller loans. In some cases, this will require partnerships with specialized loan originators that can perform more detailed analysis of individual preservation transactions in order to identify and mitigate acceptable risk in these transactions. CDFI loans, investments and lines of credit to strong for-profit and nonprofit mission-oriented intermediary lenders and developers can help expand bridge financing and longer term financing of affordable rental housing. GSEs can also expand the pool of available credit for preservation transactions by purchasing affordable multifamily rental property mortgages from CDFIs. Flexible underwriting of preservation transactions should balance the inherent risks of preserving government subsidized properties in underserved markets with the overall strengths of each individual project.

Evaluation and Ratings

The Trust does not support a "satisfactory/unsatisfactory" rating system for the GSEs, but strongly urges FHFA to release specific, quantitative information about the Enterprises activities with regard to their duty to serve these needs. For example, in the area of affordable housing preservation, we suggest that the enterprises report the amount of loan capital, equity, and loan, bond, or tax credit guarantees they have provided for apartments that are affordable to (1) low-income, (2) very low-income, and (3) extremely low-income households, respectively.

The proposed rule states that "…Enterprise outreach, such as providing technical assistance, or other support may be possible and appropriate." We agree, but we urge that under no circumstances should technical assistance be considered toward meeting the duty to serve: it is actual investment in preserving affordable rental housing that should be measured.

Thank you for the opportunity to provide these comments on the GSE duty to serve affordable housing preservation. If you have any questions, please contact me at 202-333-8931, extension 130.

Sincerely,

Toby Halliday
Vice President, Federal Policy