



July 22, 2010

Alfred M. Pollack
General Counsel
Attention: Comments/RIN 2590-AA27
Federal Housing Finance Agency
1700 G Street, NW, Fourth Floor
Washington, DC 20552

The National Community Reinvestment (NCRC) supports the Federal Housing Finance Agency's proposal to use a CRA-like exam to evaluate the Government Sponsored Enterprises' (GSEs) performance in serving underserved markets. NCRC believes that elements of the FHFA's proposal need to be strengthened in order to increase the rigor of the FHFA's proposal and make the CRA-like exam more effective.

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. Hence it is imperative that FHFA develops a strong regulation that promotes safe and sound lending in underserved markets.

Per the statutory requirement of the Housing and Economic Recovery Act of 2008, FHFA must evaluate and rate the GSEs performance in serving the manufactured housing market, the affordable housing preservation market, and the rural market. Under each market category, the FHFA is proposing four assessment factors: the loan product assessment factor, the outreach assessment factor, the loan purchase assessment factor, and the investments and grants factor. For each factor, the GSEs submit quantifiable goals and objectives over two years, similar to the CRA strategic plan option.

A shortcoming for proposed evaluation methodology is the lack of weights. The FHFA should reconsider its decision not to apply weights to each factor since each factor is not equally important. The loan purchase factor is the most important factor since this factor measures the major activity of the GSEs, which is purchasing loans and providing a secondary market for loans made to traditionally underserved populations. The loan purchase factor should count for 50 percent of the overall rating. In addition, the FHFA should add as a criterion to the loan purchase factor the percent of loans the primary market has issued to very low-, low-income, and moderate-income borrowers. This criterion is needed to measure whether the GSEs are leading or lagging the primary market. The percent of their purchases of loans for each borrower income category should be higher than or at least equal to the percent of loans that the primary market makes to each income category. Not including this explicitly in the regulation as a criterion misses a very important measure of GSE performance.

The FHFA must also revise its proposed ratings categories. It's proposed two ratings of "in compliance" or "noncompliance" are too broad and can obscure real distinctions in GSE performance. Under this rating scheme, a GSE can barely satisfy its duty to underserved markets and still be deemed in compliance. NCRC urges the FHFA to adopt ratings similar to that used on CRA component tests. Specifically, NCRC proposes ratings of Outstanding, High Satisfactory, Satisfactory, Low Satisfactory, Needs to Improve, and Substantial Non-Compliance. These ratings would be assigned to each assessment factor and for each underserved market (the FHFA's proposal to use different ratings for assessment factors and underserved markets is confusing). With these ratings, the general public would have more refined information about the extent to which the GSEs are meeting their duty to underserved markets. For example, the rating of Satisfactory is mediocre, while Low Satisfactory could be regarded as barely passing and the last two ratings are the failed ratings. A GSE with a rating of Low Satisfactory and below must be required to submit a housing plan, as proposed by the FHFA, in which the GSE provides specific details about how it will improve its performance.

The proposal is unclear regarding when the FHFA will be issuing ratings. Will the FHFA issue ratings to the GSE's two year plan or on an annual basis when the FHFA is analyzing the extent to which the GSEs have attained the goals outlined in the plan? NCRC suggests that the FHFA follow the CRA strategic plan procedure. Under the CRA strategic plan option, the regulatory agency approves a bank's proposal for the level of loans, investments, and services that would achieve an Outstanding or Satisfactory rating on the lending, investment, and service tests. Then after the passage of time specified in the strategic plan, the agency assigns a rating under each test based on the extent to which the bank has made the level of loans, investments, and services specified in its strategic plan.

The FHFA must establish procedures for accepting public comments because comments can improve the rigor of the FHFA's evaluation of GSE performance by pointing out areas of weakness or strength in GSE performance that may not occur to the FHFA. The FHFA should establish 60 day public comment periods to receive comments upon submission of the GSE plans and when the agencies are evaluating GSE performance annually. When the GSEs are required to submit housing plans to take corrective action in the event of failed ratings, the FHFA must also establish a 60 day public comment period for receiving comments on the adequacy of the housing plan.

Prohibition against Certain Loans for Counting

In the case of manufactured home lending, NCRC agrees that chattel loans cannot be counted since abuses are more frequent in chattel lending than when manufactured homes are titled as real property. In addition, NCRC agrees with the FHFA that loans purchased by the GSEs cannot include mandatory arbitration clauses. NCRC also supports the FHFA's proposal that neither purchases of HOEPA loans, private label securities or second mortgages be counted towards the duty to served underserved markets because of

the high level of abusive practices associated with HOEPA loans, private label securities, and second mortgages.

The FHFA is also correct to be proposing that mortgages with “unacceptable” terms must not count towards the duty to serve underserved markets but FHFA should strengthen its proposal of which terms and conditions constitute unacceptable mortgages.¹ 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-traditional guidance states that “clear policies should govern the use of reduced documentation.”² 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 strong 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.³

Conclusion

NCRC appreciates the opportunity to comment on the proposed evaluation system for assessing the GSE compliance in serving the underserved markets. If the FHFA adopts

¹ 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.

² Interagency Guidance on Nontraditional Mortgage Product Risks, Federal Register, October 4, 2006, Vol. 71, No. 192, p. 58614

³ Statement on Subprime Lending, Federal Register, Vol. 72, No. 131, July 10, 2007, p. 37574



the recommendations offered by NCRC, the CRA-like exams for the GSEs will effectively measure whether the GSEs are financing safe and sound loans for America's underserved markets. If you have additional questions, please contact either myself or Josh Silver, Vice President of Research and Policy, on 202-628-8866.

Sincerely,

A handwritten signature in black ink, appearing to read "John Taylor". The signature is written in a cursive style with a large, sweeping initial "J".

John Taylor
President and CEO