

July 19, 2010

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

Submitted via www.regulations.gov and E-mail to RegComments@fhfa.gov

RE: Comments / RIN 2590-AA27
Notice of Proposed Rulemaking on Enterprise Duty to Serve Underserved Markets

Dear Mr. Pollard,

Thank you for the opportunity to provide comments on the proposed rule for the enterprises' duty to serve underserved markets. CFED was established over 30 years ago to promote economic opportunity. For the past five years, we have led a network and managed a national initiative, Innovations in Manufactured Homes (I'M HOME), which seeks to ensure that all homeowners, regardless if their home is site-built or manufactured, enjoy the same rights and privileges of homeownership. I'M HOME also promotes manufactured housing as an affordable and high-quality homeownership option.

On September 17, 2009, CFED submitted comments to the FHFA on the advanced notice of rulemaking on duty to serve. We recognize the challenges in developing this rule in the midst of the economic difficulties facing our nation. We appreciate the FHFA's commitment to and recognition of the importance of this rule and continued work to issue a fair rule that increases mortgage liquidity in a safe and sound manner for this underserved market.

We are pleased to submit the following comments to the FHFA on the enterprises' duty to serve. While CFED's comments focus on the manufactured housing market, we also recognize the importance of both the preservation and rural markets, and their overlap with manufactured housing. We would like to note that we support FHFA's proposal of using the USDA's definition of rural.

Conservatorship

We recognize the enterprises' conservatorship status and appreciate the FHFA's continued expectation that they fulfill their core statutory purposes, which include affordable housing. We are concerned, however, that the focus on existing core business activity and requirement that the enterprises not engage in new lines of business will be interpreted in an overly cautious way.

The spirit and purpose of the duty to serve rule stems from the recognition that these markets have been underserved and that a targeted focus on serving manufactured housing, preservation and rural markets need be encouraged. Excluding all new activities goes against the intent and purpose of serving underserved markets. The recession, combined with the opportunities provided by conservatorship, should be the time for innovation within these underserved markets – in a safe and sound manner that recognizes the lessons learned from our recent housing bubble.

On page 41 of the proposed rule, the FHFA indicates that the prohibition from engaging in new activities does not preclude new activities that are substantially similar to those previously approved by the FHFA. While indicating that the FHFA will take this into account when reviewing the enterprises' plans, CFED encourages the FHFA to clarify the distinction between "new activities" and those "substantially similar to existing activities." Moreover, CFED encourages the FHFA to take a broad view on this distinction. For example, Freddie Mac had been preparing for the launch of a multi-family loan product for manufactured home communities this year. However, within days of the issuance of the FHFA's proposed rule on duty to serve, Freddie Mac issued an announcement halting these plans. Multi-family lending has been an existing enterprise product, primarily offered by Fannie Mae, and we feel that this would qualify it within the parameters of the proposed rule. This lack of clarity, however, is pushing for an overly-cautious interpretation.

We encourage the FHFA to take a joint inventory of products and services currently offered by the enterprises, including existing products, such as multi-family community financing, Fannie Mae's MH Select product and Freddie Mac's leasehold product. This inventory should be the basis for developing a baseline on determining what would be allowed within duty to serve for either enterprise.

Personal Property Loans

CFED applauds FHFA's recognition that sustainable homeownership results, in part, from the enforcement of appropriate consumer protections. We acknowledge the added difficulty in developing guidance that would address this concern and therefore understand the FHFA's exclusion of personal property, or chattel, financing from duty to serve.

We respectfully disagree; however, that advancing personal property lending that also provides for consumer protections would require legislative or regulatory changes. Most manufactured home financing occurs in the personal property space; as noted in the proposed rule, 63% of new manufactured homes placed are titled as personal property. Moreover, a number of states lack a legal process for converting homes to real property. We note our September 17, 2009 comment letter recommending a "fair chattel" product as an interim solution while the policy and market landscapes align toward greater availability of conventional mortgage lending in the manufactured home marketplace. While not seeking the FHFA to reconsider its position on excluding chattel from duty to serve, we strongly urge the FHFA to foster enterprise activity that promotes conventional lending on manufactured housing, including in states that lack titling conversion statutes and in circumstances that provide for consumer protections, such as in resident-owned communities.

CFED is optimistic that this rule will advance state policy change to promote the titling of manufactured homes as real property and also move more lenders into the manufactured home conventional mortgage market. As you know, the Uniform Law Commission is developing a uniform law on property conversion, which we feel would go a long way in increasing consistency and efficiency in this area of mortgage finance. It is critical that the FHFA provide leadership to guide the enterprises toward this market change that is ultimately in the best interest of consumers, lenders, tax payers and the manufactured housing industry.

Manufactured Home Communities

We appreciate the FHFA's recognition of the importance of manufactured home communities to the availability of affordable housing, which also relates directly to the affordable housing preservation underserved market. The proposed rule's recognition of the shortage of financing in this segment of the market underscores the importance of this rule. CFED strongly urges the FHFA to include assistance to manufactured housing communities within the duty to serve final rule.

The proposed rule indicates that assistance to manufactured home communities may not be considered for duty to serve, primarily because in most cases homes in communities are titled as personal property. The proposed rule also states concerns over the vulnerability of tenants in investor-owned communities, which is not consistent with the intent of duty to serve. It did, however, note support for assistance to resident-owned communities and the proposed rule further describes comments on how resident-owned communities offer consumer protections in contrast to those in investor-owned communities.

1. Safety and soundness of financing

Safety and soundness must be a key consideration in the development of multi-family products for manufactured home communities. Lender interests, in addition to consumer interests, must be weighed heavily when determining under what parameters such activities would be considered toward duty to serve.

Simple rules could be developed to help the enterprises determine which community lending falls within duty to serve. These rules could be drafted as elements to a standard or model lease that would receive pre-approval from the enterprises and FHFA. CFED and the I'M HOME network would be pleased to partner with the FHFA and the enterprises in the development of a model lease template. For example, the following elements could be included for duty to serve.

- Rent increases that are tied to a published, third-party price index.
- A stipulation requiring that residents be given a right of first offer or at minimum an option to purchase, when a community is to be sold or change of use is to occur during the term of the insured loan.
- A right to sell the home in place, either by homeowner or lender.
- Agreement that residents may enjoy fundamental freedoms, such as a right to organize and associate.

- In the case of default, a conventional foreclosure process as opposed to repossession.
- During the underwriting phase, verification that the community is properly capitalized and maintenance plan is in place.

2. Distinctions between investor-owned and resident-owned communities

There is a clear distinction between investor-owned and resident-owned communities, in particular as they relate to duty to serve. Resident ownership offers homeowners basic rights and opportunities that are in the spirit of duty to serve, such as security, the opportunity to build assets and control over ones homestead. Studies have shown that all things being equal, homes in resident-owned communities increase in value at a higher rate compared to homes in investor-owned communities.

The primary argument is that resident ownership offers consumers and lenders with a safe and sound investment opportunity. Ultimately, this creates a stronger market for the enterprises, as well as tax payers. CFED encourages the FHFA to facilitate and promote enterprise activity within the resident-owned community multi-family market.

3. Potential to ensure appropriate consumer protections in conjunction with such assistance

Promoting resident ownership in manufactured home communities addresses many consumer protection issues as well as lender security concerns. The security and benefits of resident-owned communities to both homeowners and lenders make them more desirable to homeowners, lenders and the secondary mortgage market. Another critical factor in promoting resident ownership of communities is the availability of community-based technical assistance providers to help organize and prepare community residents with the legal, financial and organizing tools needed to purchase their community. Fostering the capacity of such organizations creates a more viable market for conventional lenders and the enterprises.

However, there are different legal structures of community ownership. When purchasing their community, many residents choose to organize as limited-equity cooperatives. Doing so limits the value of the share (the homeowner's interest in the land) but ensures stable and affordable entry while still allowing for a home to appreciate in value. An alternative to this approach is to form a cooperative with unlimited equity for the shareholders. In such cases, the price of moving into the community may reflect the value of the share (or land) more than the value of the home itself, and a homebuyer's mortgage may have to finance the share. Share financing creates difficulties for lenders, as the lender is not entitled to the same bankruptcy protections when financing the share as when financing a home. When there is greater equity in the land, landowners may find converting it to other uses very attractive, again threatening security for homeowners and lenders.

Encouraging assistance to limited-equity resident-owned communities is the surest way to ensure consumer protections. Resident ownership builds and preserves the manufactured home community as a healthy neighborhood: when residents own a manufactured home community they improve it, their civic engagement increases and the community at large is ensured of a long-term, stable source of affordable housing. The enterprises should encourage this solution by developing

loan products that enable residents to purchase their communities. In doing so, the enterprises need to encourage the methods of resident ownership designed to meet the needs of low- and very low-income homeowners through low share prices and universal participation as part of a preservation effort.

Evaluation

CFED supports the FHFA's proposal to establish an evaluation system similar to the one used for the Community Reinvestment Act. CFED also supports the Underserved Markets Plan that would specify actions and results for each assessment factor and for each underserved market.

1. Loan Product Assessment Factor

The loan product assessment factor would require that the enterprises evaluate their underwriting guidelines, including empirical testing of different parameters and modifications in order to increase availability of loans to families in each income group targeted by duty to serve.

CFED is pleased that the FHFA also supports inclusion of loans for previously-owned homes and energy-efficient single-sections homes. Another product to encourage would be the development of guidelines that, if met, provided eligibility for conventional financing. This was a goal of Fannie Mae's MH Select and while implementation has not been robust due to market factors, it is a promising model for defining the elements that allow a manufactured home to appreciate.

2. Outreach Assessment Factor

The outreach assessment factor would require that the enterprises engage market participants and pursue relationships to enhance services to each underserved market. Examples of market participants include nontraditional issuers, such as CDFIs and consortia sponsored by banks, local and state governments and others. Enterprise training in its products and processes would be considered, including specialized training for market participants such as USDA field staff, nonprofit and for-profit lenders and state and local HFAs.

CFED agrees with the FHFA that this is a critical element and that it should receive significant weight in scoring. Another activity, in addition to the examples provided, would be credit for research and data analysis on desktop underwriting and risk factors related to pricing manufactured home loans. Good data on long-term manufactured home loan performance are not readily and publicly available. The publishing of such research would help identify the real risks of this type of lending, clear away unsubstantiated biases and help inform new product development, both inside and outside of the enterprises.

3. Loan Purchase Assessment Factor

The loan purchase assessment factor would not establish quantitative targets, but would consider past performance on the volume of loans purchased in a particular underserved market relative to

the volume of loans the enterprise purchases in a given year. The plan would take into account the need for flexibility in dealing with unexpected market changes.

CFED supports the FHFA's proposal that this factor receive significant weight.

4. Investments and Grants Assessment Factor

Due to conservatorship, the investment and grants assessment factor will be considered but will not receive significant weight. We believe that many of the examples suggested in the proposed rule, such as grants that promote peer-learning and industry knowledge on innovative and promising practices on the development of new products and activities would in fact be activities under the outreach assessment factor. In fact, FHFA's examples of training in the outreach assessment factor of the proposed rule are similar to these suggestions of listed under the investment and grants assessment factor. It is important to recognize that a strong nonprofit network can provide critical field-building connections for the enterprises that allow them to more accurately and safely meet market needs.

5. Submission and Review of Plan

CFED encourages the FHFA to consider a public comment process and period to be formally built into the submission and review process. This would provide a formal process for collecting input from the industry, homeowners and other stakeholders on both the performance of the enterprises and also the duty to serve rule.

CFED appreciates the FHFA's leadership on this important rule and welcomes the opportunity to collaborate and offer additional guidance and assistance.

Sincerely,



Andrea Levere
President