FannieMae

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July 22, 2010

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

Attention: Comments/RIN 2590-AA27
Enterprise Duty to Serve Underserved Markets
Notice of Proposed Rulemaking; Request for Comments

Dear Mr. Pollard:

Fannie Mae submits the attached comments in response to the Notice of Proposed Rulemaking; Request for Comments ("Proposed Rule") in connection with the duty to serve underserved markets to be implemented by the Federal Housing Finance Agency ("FHFA"). The duty to serve underserved markets was created by section 1129 of the Housing and Economic Recovery Act of 2008 and requires Fannie Mae and Freddie Mac to "provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages for very low-, low- and moderate-income families" with respect to manufactured housing, affordable housing preservation, and rural areas.

Fannie Mae appreciates FHFA's commitment to the careful implementation of this new statutory obligation, particularly in light of restrictions on Fannie Mae's business arising out of the conservatorship. Set forth in the attached document are Fannie Mae's responses to specific requests for comment included in the Proposed Rule. Also included are more general observations about the practical implications of certain aspects of the Proposed Rule.

If you have questions regarding the matters addressed in the attached document, please feel free to contact the undersigned at (202) 752-7144.

Sincerely,

Timothy J. Mayopoulos
Executive Vice President, General Counsel
and Corporate Secretary

FannieMae

Comments of Fannie Mae

on the

Enterprise Duty to Serve Underserved Markets

Proposed Rule

RIN 2590-AA27

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I. Overview

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the "1992 Act"), as amended by the Housing and Economic Recovery Act of 2008 ("HERA"), requires the Federal Housing Finance Agency ("FHFA") to implement rules for Fannie Mae and Freddie Mac (the "Enterprises" and each an "Enterprise") pursuant to which the Enterprises will "increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets."[1] Those markets identified as underserved are manufactured housing, affordable housing preservation, and rural areas.

On August 4, 2009, FHFA published an advance notice of proposed rulemaking to solicit comments on how FHFA should approach drafting regulations to implement the duty to serve underserved markets (the "ANPR").[2] Fannie Mae submitted its response to the ANPR on September 18, 2009. In its response, Fannie Mae asked FHFA to focus on certain broad objectives as it considers how to implement the new duty: ease and consistency in applying the new rules; flexibility in determining the activities that meet the duty; and appropriate focus on the safety and soundness of the Enterprises. On June 7, 2010, FHFA published the "Enterprise Duty to Serve Underserved Markets; Notice of proposed rulemaking; request for comments" (the "Proposed Rule").[3] Fannie Mae believes that the Proposed Rule largely addresses Fannie Mae's broad objectives in a manner that appropriately serves the underserved markets.

As HERA recognized, the underserved markets are in need of the benefits that a secondary market can bring, including liquidity and flexibility. FHFA's approach also recognizes the structural issues that have made serving these markets challenging for both the primary and the secondary markets.

Each of the underserved markets faces different financing challenges. In the manufactured housing market, titling issues have had a detrimental impact on the financing available for manufactured homes. Affordable housing preservation is also facing particular challenges as existing properties need inexpensive financing to remain part of the affordable housing stock. In rural areas, financing can be difficult to obtain for small projects and housing in remote areas. Defining the rural market is a necessary and important first step to ensure that the Enterprises can work to maximize the opportunities available through existing programs. Fannie Mae must meet its duty in a manner that is both consistent with the objectives of the conservatorship and safe and sound for the company. The Proposed Rule takes all of these considerations into account to ensure that the Enterprises can meet their statutory duties in a financially responsible manner.

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[1] 12 U.S.C. § 4565(a).
[2] Duty to Serve Underserved Markets for Enterprises, 74 Fed. Reg. 38,572 (advance notice Aug. 4, 2009).
[3] Enterprise Duty to Serve Underserved Markets, 75 Fed. Reg. 32,099 (proposed June 7, 2010).

II. FHFA's Requests for Comment

Throughout the Proposed Rule, FHFA requested comments on particular issues, definitions, and approaches to meeting the duty to serve each of the underserved markets. Set forth below are Fannie Mae's responses to the specific matters on which FHFA requested comment.

A. *Manufactured Housing*

As proposed, only Fannie Mae's activities that assist families living in single family manufactured housing units titled as real estate would contribute to performance toward meeting the duty to serve the manufactured housing market. Chattel mortgages and loans secured by manufactured housing communities would not meet the duty to serve this market.[4] The Proposed Rule suggests that these types of manufactured housing financing do not benefit families and do not provide a safe and sound investment for the Enterprises.

Fannie Mae supports FHFA's efforts to improve the market for manufactured housing by encouraging support for consumer protections that benefit homeowners. Fannie Mae also supports FHFA's focus on safe and sound lending practices. Fannie Mae's underwriting guidelines and practices for manufactured housing have allowed Fannie Mae to build its business in a manner that minimizes risk to the company and provides benefits to homeowners. Fannie Mae also notes that this market has special significance, not only because it was identified by Congress as a market in need of assistance, but also because it supports both the rural and preservation markets. As such, Fannie Mae suggests that its standards strike an appropriate balance between meeting market needs and supporting safe and sound lending, and therefore its real estate-secured lending should contribute toward meeting the duty to serve the manufactured housing market.

1. Manufactured Housing - Background

As FHFA is aware, Fannie Mae has not invested significantly in chattel financing because that form of titling the collateral results in a financing transaction that the company believes is significantly less sustainable for borrowers, and therefore a significantly higher risk for Fannie Mae, than real estate financing. In particular, consumer protections such as the disclosure of settlement costs and prohibition of referral fees are not applicable, and, in the event of default, borrowers are subject to repossession rather than foreclosure.[5]

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[4] Fannie Mae interprets the Proposed Rule to allow single family homes titled as real estate and located in a manufactured housing community to contribute toward performance of the duty. Fannie Mae also interprets the Proposed Rule to exclude loans on or assistance to resident-owned communities, even where the individual units are titled as real estate.

[5] *See* D. Buchholz, *"Mobile" Homes No More: Policy Innovations in Manufactured Housing*, Fannie Mae Foundation Housing Facts & Findings, Vol. 7, No. 4 at 7 (2005).

These distinctions carry over from the early history of mobile homes, which developed from travel trailers popular in the 1940s and 1950s. Travel trailers were personal property and sold in a manner similar to vehicles. While manufactured housing is now permanent housing, the ownership structure still reflects the historic model of a traveler with a trailer renting land owned by another party for a short period of time.[6]

While in most cases single family loans on manufactured housing are chattel loans, some states have taken actions to recognize manufactured housing as real estate rather than personal property, to give homeowners those protections that have previously been unavailable. For example, since 1984, New Hampshire has recognized all permanently sited manufactured homes as real property.[7] Some states also allow homeowners to convert their units, including units on leased property, to real property provided certain conditions are met. These conditions may include long term leases of as much as 35 years.[8]

The Proposed Rule announced that chattel loans, loans on manufactured housing communities, and loans that allow the lender to proceed against either the home or the real estate in the event of default would not be included as part of the manufactured housing market. FHFA asked for comment on (1) considering "land/home" loans part of the duty to serve the manufactured housing market, and (2) whether manufactured housing communities should help to meet the duty to serve the manufactured housing market. In connection with manufactured housing communities, FHFA asked for specific comments on (a) the safety and soundness of financing, (b) distinctions between investor-owned and resident-owned communities, and (c) the ability of the Enterprises to ensure appropriate consumer protections.

2. "Land/home" transactions

The ANPR requested comment on the definition of "land/home" loans, and considered the various ways that manufactured homes could be titled when they are attached to real property. The Proposed Rule indicated that there is "no universal agreement on terminology or definitions" when referring to land/home loans.[9]

Fannie Mae agrees that there is inconsistency in the industry as to the definition of land/home mortgage loans. In some states, for example North Carolina, a loan is referred to as a "land/home" mortgage where the home is attached to real property, is titled as real estate, is secured by a mortgage, and is otherwise treated as a real estate mortgage under state law.[10] Some states do not provide for a single lien to encumber both the home and

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[6] http://www.fhlbboston.com/communitydevelopment/articles/03_03_01_n_detail.jsp?id=1007.
[7] N.H. Rev. Stat. Ann. § 21:21 (2010).
[8] *See* HSH Associates, "Refinancing Manufactured Housing: Get a Better Interest Rate," http://library.hsh.com/read_article-hsh.asp?row_id=1325; Cal. Health & Safety Code § 18551 (Deering 2009) (35 year lease or such shorter term as agreed by the lessor and the lessee); N.C. Gen. Stat. § 47-20.6 (2010) (20 years).
[9] 75 Fed. Reg. at 32,105.
[10] N.C. Gen Stat. § 105-273(13) (2010).

the land, but separate liens on the home and the land will both be treated as real estate. These loans may also be referred to as "land/home" mortgages.

Fannie Mae believes that the type of mortgage (chattel or real estate) is more significant, for purposes of serving the manufactured housing market than the terminology used. Fannie Mae agrees with the exclusion of chattel loans from the market for the reasons cited in the Proposed Rule. However, Fannie Mae encourages FHFA to allow all mortgage loans treated as real estate-secured under state law to contribute to performance under the duty to serve the manufactured housing market.

3. Manufactured Housing Communities

The Proposed Rule suggests that without substantial new product development and additional operational capacities and risk management processes not currently in place, and which are limited by the conservatorship, chattel is not a safe and sound investment for the Enterprises nor a sustainable homeownership option for families.[11] The Proposed Rule then extends this criticism to financing of manufactured housing communities, and excludes communities from consideration for satisfaction of the duty to serve the manufactured housing market.

Fannie Mae believes that this exclusion unnecessarily impedes its ability to fulfill its statutory mandate to serve the manufactured housing market. Fannie Mae's manufactured housing community lending program is well developed, performs strongly, and provides financing for a segment of the housing market that focuses on very low-, low- and moderate-income families, consistent with the objectives of the Proposed Rule and conservatorship. Additionally, Fannie Mae's participation in this market supports housing in rural areas[12] and provides liquidity that facilitates the preservation of affordable housing when owners are able to get economical financing and are not forced to convert the property to another use.

Removing communities from the manufactured housing market would substantially limit the size of the market that the Enterprises must serve. Single family loans on manufactured homes sited on independently owned or leased land (including both chattel and real estate-secured loans) make up about two-thirds of the manufactured housing market, and homes in communities make up about one-third.[13] According to Census Bureau data, during the period 1999-2009, deliveries of new manufactured housing units

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[11] *See* 75 Fed. Reg. at 32,103.

[12] *See* S. Bergsman, "What's Up with Manufactured Housing?" Urban Land (2006) (http://www.uli.org/~/media/Documents/ResearchAndPublications/Magazines/UrbanLand/2006/May/UL_06_05_Bergsman.ashx) (manufactured housing is more prevalent in rural areas).

[13] *See* D. Buchholz at 3. This trend appears to have remained steady over the last decade. According to the Manufactured Homes Survey, which publishes information on new manufactured homes and their placement in manufactured housing communities, an average of over 48,000 new manufactured homes per year, or nearly a third of all new manufactured homes delivered, were placed in communities during the period 1999 through 2009. U.S. Census Bureau "Selected Characteristics of New Manufactured Homes Placed: By Region" (1999-2009) (http://www.census.gov/const/mhs/site_map. html) (hereinafter "Census Bureau").

titled as real property ranged from a low of 16 percent of total deliveries (in 1999) to a high of 32 percent of total deliveries (in 2003).[14] Assuming that the number of homes located in communities and titled as real property is statistically insignificant, the opportunity for the Enterprises to serve the manufactured housing market would consist of approximately one quarter of the single family market and none of the multifamily market.

Fannie Mae suggests that this result is not what Congress intended when it decided that the Enterprises should do more to serve the manufactured housing market. Congress specifically gave FHFA the discretion to determine whether chattel lending should be part of the underserved market, and Fannie Mae agrees that, given current safety and soundness issues, it is appropriate at this time to exclude chattel from the duty to serve. However, Fannie Mae is able to finance manufactured housing communities in a safe and sound manner without the need to develop new products or practices.

Fannie Mae has substantial experience financing manufactured housing communities, and Fannie Mae's underwriting requirements and quality standards are designed to ensure that the loans are not only a safe and sound investment for Fannie Mae but also that the communities remain safe, clean, and desirable locations for residents.

To satisfy Fannie Mae's underwriting requirements, the loan must be secured primarily by the land and infrastructure supporting the community, property used to provide common amenities, and any individual manufactured homes owned by the borrower and offered for rental. Mortgages on manufactured housing communities are subject to standard Delegated Underwriting and Servicing loan terms with no minimum or maximum loan amount and for terms of five to 30 years. The maximum loan-to-value ratio is generally 80 percent. Occupancy must be stabilized, which generally requires that the community be at least 90 percent occupied.

Fannie Mae's quality standards include:

- The communities providing security for the mortgages must be professionally managed.
- The ratio of tenant-occupied homes to owner-occupied homes is generally limited to five percent. The goal of this standard is to facilitate a sense of community and pride of ownership, and thereby protect home values.
- The community must have paved roads and off street paved parking, subject to local zoning ordinances.
- The community must be served by public underground utilities or private facilities that meet certain criteria, and homes in the community must conform to

[14] Census Bureau (1999-2009). Data on the manufactured housing market is very limited. As this time, the only consistent source of information is U.S. Census Bureau data on deliveries of new manufactured homes. Recognizing the limitations of this data, it still provides useful information on characteristics of the manufactured housing market.

the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974.[15]

- The community will typically have a minimum of 50 home sites.
- Landscaping and entrance signage must be high quality and well maintained, and amenity packages must be competitive in the market place.

Once a loan is in place, Fannie Mae's servicer monitors the condition of the park to confirm that standards are being maintained. Fannie Mae has the ability under the loan documents to take action against the community owner as necessary. As one of the primary sources of financing for manufactured housing communities, Fannie Mae also has the ability to extend its quality standards to a large number of communities.

Fannie Mae's financing of communities serves a very large and important segment of the manufactured housing market. Fannie Mae's careful underwriting review and its focus on the quality of the management of the property, the property performance and condition, and other resident factors has enabled Fannie Mae to provide liquidity to this market, and has provided those residents with safe, decent, and affordable housing that may not otherwise be available. For all of these reasons, Fannie Mae requests that FHFA consider assistance to manufactured housing communities as meeting the duty to serve the manufactured housing market.

a) The Safety and Soundness of Manufactured Housing Community Financing

In most manufactured housing communities, the individual units located in the community are titled as personal property. Nevertheless, the underwriting and quality standards imposed for manufactured housing community financing discussed above have allowed Fannie Mae to successfully finance communities in a safe and sound manner, while generally preserving affordability and promoting clean, safe and sustainable housing for the resident homeowners.

The Proposed Rule highlights a comment from ROC USA, stating that it had originated $150 million in loans to resident-owned communities with no loan lost or charged off.[16] Fannie Mae's current manufactured housing community outstanding loan balance is $4.24 billion, representing 163,509 pad sites. Fannie Mae has also seen high quality performance in these loans, and serious delinquency rates for this book of business are lower than for other multifamily property types.

b) Investor-Owned and Resident-Owned Communities

Investor-owned communities are the vast majority of manufactured housing communities in the United States, and in some cases, may be a primary source of housing, particularly in high-cost areas. Only about two percent of manufactured housing communities are

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[15] 42 U.S.C. § 5401 *et seq.*
[16] 75 Fed. Reg. at 32,105.

resident-owned communities.[17] Most resident-owned communities are located in states with a relatively long history of successfully promoting this form of ownership, including New Hampshire and Florida.

When comparing the two ownership structures, each has certain benefits and drawbacks. From the residents' perspective, an investor-owned community that is well-managed and maintained by an owner with sufficient financial resources provides a safe and decent environment. The communities in which Fannie Mae invests are professionally managed and the owners must have appropriate reserves to provide for upkeep. In return, the community owner retains ownership and control over the pad sites and infrastructure in the same way that a multifamily apartment owner does over the apartment complex, benefiting from revenues and appreciation in value and bearing expenses associated with operation. As with multifamily properties, the residents have little control over the owner's decisions with regard to rent increases or selling the property for another use. Alternatively, a resident-owned community may provide more protection from significant and unexpected rent increases and allows residents to have a voice in decisions relating to disposition of the land.

From the lenders' perspective, investor-owned communities are generally easier to underwrite because of the financial capacity of the investor and the track record of the property manager. Newly-formed cooperatives, on the other hand, tend to require significant technical assistance and may not be well capitalized. Nevertheless, the resident-owned structure has been in existence for over 100 years, so resident-owned manufactured housing communities that can demonstrate solid track records and strong reserves do exist. Fannie Mae has an excellent history with cooperative housing, and is able to appropriately evaluate secondary market transactions involving resident-owned communities.

Both types of ownership have benefits despite some drawbacks. However, because of their importance to the manufactured housing market, and because this financing promotes affordable housing preservation, FHFA should allow investments in both investor-owned and resident-owned manufactured housing communities that are well-structured and that comply with Fannie Mae's guidelines, to contribute toward performance to meet the duty to serve.

c) Consumer Protections

The Proposed Rule asks whether Fannie Mae could ensure "appropriate consumer protections" for homeowners in manufactured housing communities. Because neither the community investor nor Fannie Mae is a party to the unit purchase transaction, it is unclear at this time what influence Fannie Mae could have over the terms of that transaction. However, Fannie Mae's status as one of the few sources of financing for communities allows the company to influence general underwriting standards and living conditions in the properties.

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[17] ROC USA internal survey (http://rocusa.org/for-homeowners/faqs.aspx#1).

Another possible area of influence is in the use of long-term leases. Fannie Mae has been working to encourage the use of long term leases, which could, by limiting rent increases, extending the homeowner's rights to the land, and possibly allowing for the conversion to a real estate mortgage, help homeowners to realize some of the benefits of holding real estate rather than chattel.

B. Affordable Housing Preservation

In the Proposed Rule, FHFA specified those programs that would be eligible to satisfy the duty to serve the affordable housing preservation market. Fannie Mae requests that FHFA adopt the broad and flexible approach to eligible programs reflected in HERA. FHFA also asked for comment on how certain programs could be used to promote preservation. Fannie Mae provides comments below on the National Housing Act's Section 221(d)(3) below market interest rate program and Title IV of the McKinney-Vento Homeless Assistance Act.

1. Eligible Housing Programs

The 1992 Act states that the Enterprises must take actions to preserve affordable housing "including housing projects subsidized under" certain enumerated programs. The 1992 Act does not suggest that this list is either exhaustive or limited to subsidized housing. In fact the legislative history confirms that the Enterprises would be expected to serve the affordable housing preservation market "including through current government programs."[18] Moreover, FHFA noted in the preamble to the Proposed Rule that affordable housing is preserved both when subsidies on multifamily properties keep rents low, and also when unsubsidized properties are maintained in good condition at affordable rents.[19]

Fannie Mae has observed that, notwithstanding the language of HERA and FHFA's preamble language, the Proposed Rule is substantially more limiting. The Proposed Rule requires that the Enterprises serve the affordable housing preservation market through "eligible housing programs," which are limited to those specific programs set forth in HERA, the Neighborhood Stabilization Program, and such state or local housing programs as FHFA determines to be comparable to the listed programs.[20] However, Fannie Mae believes that Congress intended for the Enterprises to engage in a variety of activities to help preserve affordable housing, and that the statutory list of housing programs only provides examples of the type of projects that can help to preserve affordable housing; other programs may also exist now or be developed in the future.

Fannie Mae recommends that, to be consistent with the 1992 Act, FHFA modify the language of the Proposed Rule to state: "Each Enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low- and moderate-income families <u>including</u> under eligible

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[18] Report of the Committee on Financial Services, H.R. Rep. No. 110-142, at 135 (2007).
[19] 75 Fed. Reg. at 32,102.
[20] Proposed 12 C.F.R. § 1282.33.

housing programs. . . ."[21] By aligning the Proposed Rule more closely with the statutory language, FHFA preserves the flexibility that HERA intended.

Fannie Mae notes that the federal banking agencies are planning to revise their regulations to encourage institutions to increase their eligible Neighborhood Stabilization Program activities in target areas by including them in performance under the Community Reinvestment Act. Activities that would receive favorable consideration include donations of Real Estate Owned to non-profit housing organizations, financing for the purchase and rehabilitation of foreclosed or abandoned properties, and investments that support the development of demolished or vacant properties in low- and moderate-income areas.[22] Fannie Mae understands that these activities would also be eligible to meet the duty to serve the affordable housing preservation market.

Fannie Mae supports the approach taken by FHFA in the Proposed Rule to encourage the Enterprises to identify areas where they can have a substantial beneficial impact and focus their efforts in those areas. Fannie Mae will identify in its underserved markets plan those areas on which it will focus during the term of the plan.

2. Specific Programs

The Proposed Rule requested comments on whether loans under the Section 221(d)(3) below market interest rate mortgage program should be considered part of the affordable housing preservation market. The Proposed Rule also asked for comment on how the Enterprises could serve the market utilizing Title IV of the McKinney-Vento Homeless Assistance Act. Fannie Mae's responses are set forth below.

a) Section 221(d)(3) loans

The 1992 Act included, as an eligible housing program, the "below-market interest rate mortgage program under Section 221(d)(4) of the National Housing Act."[23] The Proposed Rule requested comment on whether loans under the Section 221(d)(3) program should also contribute toward performance in meeting the duty.

As discussed above, Fannie Mae believes that the 1992 Act would allow activities undertaken in connection with the Section 221(d)(3) program to contribute toward meeting the duty to serve the affordable housing preservation market, provided those activities contribute to affordable housing preservation and serve very low-, low- and moderate-income families. According to the U.S. Department of Housing and Urban Development ("HUD"), the Section 221(d)(3) and (4) programs are very similar. HUD describes the 221(d)(3) and (4) programs as follows:

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[21] *See* proposed 12 C.F.R. § 1282.33(a) (emphasis added).
[22] Community Reinvestment Act Regulations, Notice of proposed rulemaking, 75 Fed. Reg. 36,016 (June 24, 2010).
[23] 12 U.S.C. § 4565(a)(1)(B)(iii).

> Section 221(d)(3) and 221(d)(4) insures mortgage loans to facilitate the new construction or substantial rehabilitation of multifamily rental or cooperative housing for moderate-income families, elderly, and the handicapped. . . .
>
> Section 221(d)(3) and Section 221(d)(4) insures lenders against loss on mortgage defaults. Section 221(d)(3) is used by nonprofit sponsors and Section 221(d)(4) is used by profit-motivated sponsors. Both programs assist private industry in the construction or rehabilitation of rental and cooperative housing for moderate-income and displaced families by making capital more readily available. The program allows for long-term mortgages (up to 40 years) that can be financed with Government National Mortgage Association (GNMA) Mortgage Backed Securities. . . .
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> The principal difference between the (d)(3) and (d)(4) programs is the amount of insured mortgage available to non-profit and profit motivated sponsors. Under Section 221(d)(3), nonprofit sponsors or cooperatives may receive an insured mortgage up to 100 percent of HUD/[Federal Housing Administration ("FHA")] estimated replacement cost of the project. Profit motivated sponsors using Section 221(d)(4) and all types of sponsors under Section 221(d)(4) can receive a maximum mortgage of 90 percent of the HUD/FHA replacement cost estimate.[24]

Because there is very little difference between the Section 221(d)(3) and (4) programs, Fannie Mae believes that refinancing activities related to both programs should contribute toward meeting the duty to serve the affordable housing preservation market. Fannie Mae also anticipates that projects with below market interest rates financed under the Section 221(d)(3) program will be among those projects in need of refinancing or recapitalization, as discussed in the Proposed Rule, and requests that such transactions and related activities contribute toward meeting the duty to serve the affordable housing preservation market.

b) Title IV of the McKinney-Vento Homeless Assistance Act

The 1992 Act lists Title IV of the McKinney-Vento Homeless Assistance Act as a program that may satisfy the duty to serve the affordable housing preservation market. The Proposed Rule requested comments on how the Enterprises could assist properties subsidized by this program.

The McKinney-Vento Homeless Assistance Program is the nation's primary assistance program for homeless individuals and families. Title IV authorizes capital, operating and support services funding for emergency shelter, transitional housing programs and permanent supportive housing, through the Emergency Shelter Grant program, the Supportive Housing Demonstration Program, Supplemental Assistance for Facilities to

[24] HUD, "Mortgage Insurance for Rental and Cooperative Housing: Section 221(d)(3) and Section 221(d)(4)," (Apr. 2010) (http://www.hud.gov/offices/hsg/mfh/progdesc/rentcoophsg221d3n4.cfm).

Assist the Homeless, and Section 8 Single Room Occupancy Moderate Rehabilitation. Fannie Mae expects that its efforts to support affordable housing preservation would focus on the permanent supportive housing component.

Fannie Mae has substantial experience with asset managing its equity investments, and this experience can be leveraged to provide assistance to lenders and owners of supportive housing, and to lenders and owners of emergency shelter or transitional housing programs that are seeking to be converted to permanent supportive housing. Fannie Mae agrees that providing this type of assistance and expertise should contribute to meeting the duty to serve the affordable housing preservation market.

C. Rural Areas

Fannie Mae utilizes certain products and activities to target the needs of rural areas. These include the U.S. Department of Agriculture's ("USDA") Section 502 guaranteed loan and direct leverage programs for single family housing, and the Section 538 Guaranteed Rural Rental Housing Program for multifamily housing. Given Fannie Mae's experience with these programs, Fannie Mae supports the approach to defining rural areas set forth in the Proposed Rule. As discussed in further detail below, the definition adopted in the Proposed Rule, which is implemented by USDA, has several advantages over other potential definitions.

1. Definition of Rural

For purposes of determining those geographies that should benefit from the efforts of the Enterprises to meet the duty to serve rural markets, Fannie Mae supports the use of the definition of "rural area" set forth in the Housing Act of 1949 and administered by the USDA. This definition of rural areas has the advantage of already being well-known and utilized, it is maintained and updated by an independent third party (USDA), and it provides consistency in the treatment of individual properties because it is utilized for determining eligibility for other federal programs that benefit rural areas.

Fannie Mae recognizes that there will be operational implementation work associated with using this definition. Fannie Mae anticipates working with FHFA and the USDA to automate the capability of identifying properties as rural. As an interim step, Fannie Mae agrees that it would be helpful to use Rural-Urban Commuting Area ("RUCA") codes for determining the rural classification.

2. Tribal Lands and Colonias

Fannie Mae does not recommend including, in the assessment of needs and opportunities, tribal lands and colonias that do not meet USDA's definition of rural. Fannie Mae estimates that approximately 95 percent of tribal lands and colonias are located in rural areas as defined by USDA. The inclusion of tribal lands and colonias that do not meet the USDA's definition of rural would create operational challenges in sizing the market but would not impact the reach of Fannie Mae's work to benefit Native Americans and residents of colonias.

The programs that Fannie Mae participates in to reach families on tribal lands and in colonias do not distinguish between housing located in rural and urban areas. One example is HUD's Section 184 Indian Home Loan Guarantee Program, which is available to all eligible Native American individuals, tribes, and tribally-designated housing finance entities regardless of geographic location. Similarly, Fannie Mae's Native American Conventional Lending Initiative allows for conventional lending on tribal lands even when those restricted lands are in an urban setting. Any Native American, Indian Housing Authority, or Tribally Designated Housing Entity may participate in the initiative, which funds the purchase, rehabilitation or construction of a single family home on tribal or federally-restricted trust lands.

3. Section 514 program

USDA's Rural Development group is the only national source of construction funds dedicated to farm labor housing. Through the Farm Labor Housing Program, authorized by Section 514 of the Housing Act of 1949, USDA provides low-interest loans and grants to public or non-profit agencies or to individual farmers to build affordable rental housing for farm workers. However, because the program is a direct loan program, USDA is the investor in these loans and Fannie Mae sees little opportunity for the development of a secondary market.

4. Assistance to Farm Workers

According to the Housing Assistance Council, fewer farm workers are migrating to follow crop harvests, and this is creating increased demand for year-round housing. As a result, some employers are converting migrant housing to year-round housing. In addition, much farm worker housing consists of aging housing stock that may benefit from rehabilitation financing.

Fannie Mae does not have expertise in farm labor housing, limiting any technical support the company could provide. Fannie Mae could potentially provide grant funding to assist non-profit entities in their outreach to farm workers and employers, but opportunities to make other types of investments are unclear. Within the constraints of conservatorship, Fannie Mae will explore ways to work with lenders to meet the needs of this market.

5. Rural Areas with High Median Incomes

Rural areas with very high median incomes are frequently resort areas where the service industry is the predominant employer. Year-round workers in those areas include low wage workers who are unable to find housing in proximity to the communities in which they work. To assist these workers, localities have begun implementing inclusionary zoning and utilizing community land trusts.

An inclusionary zoning ordinance requires that developers set aside a specific percentage of units in new housing developments as affordable units, usually only available to buyers within a certain income range. To keep them affordable for the long term, the city or county imposes resale restrictions on the property that limit the income eligibility of future buyers.

Community Land Trusts ("CLTs") are utilized by nonprofit organizations to provide homeownership opportunities for low-income families. In a CLT transaction, the homeowner buys the home (via a long-term lease agreement) and pays a low monthly rate to lease the land from the CLT. The lease includes resale restrictions that require the continued use of the property to serve low-income residents.

Fannie Mae has purchased mortgages secured by properties subject to resale restrictions or held by CLTs for many years. In 2006, Fannie Mae expanded its eligibility requirements to broaden the range of properties with deed restrictions that could be included. Significantly, Fannie Mae took the following steps:

- Added mortgages secured by properties subject to resale restrictions, as mortgages that qualify for sale to Fannie Mae, when the resale restrictions survive foreclosure or acceptance of a deed-in-lieu of foreclosure;
- Modified requirements for loan-to-value (LTV) ratio. The LTV may now be based upon the appraised value of the property without resale restrictions, instead of the lesser of the sales price or market value, for mortgages when the resale restrictions terminate automatically upon foreclosure or upon the acceptance of a deed-in-lieu of foreclosure; and
- Expanded eligible subsidy providers to include nonprofit organizations, universities, and employers.

Fannie Mae continues to encourage the use of CLTs, and is working with a number of other parties, including housing finance agencies ("HFAs"), to promote this type of financing.

D. Evaluation

The Proposed Rule asked for comment on potential methodologies for estimating affordability when unit rental and tenant income information are not available. The Proposed Rule also asked whether a limit should be imposed on the Enterprises' ability to estimate affordability. Fannie Mae has much experience with estimating affordability for purposes of calculating performance under the housing goals. As Fannie Mae has previously raised with FHFA, it is not always possible to obtain affordability information, and therefore a mechanism for estimating affordability, particularly one that takes into account the challenges of obtaining rental data, is necessary.

1. Estimating Affordability

The Proposed Rule allows an Enterprise to estimate affordability for a rental unit when actual tenant income or rent is not available. The Proposed Rule states that "an Enterprise may estimate affordability with respect to such unit by using the median income level of the census tract where the property is located."[25] To estimate affordability using this method, the Enterprise would compare the median income level of the census tract where the property is located with the area median income for the metropolitan area, county or non-metropolitan area where the property is located, as determined by HUD. Fannie Mae has historically used this calculation to identify low-income areas for purposes of determining whether certain loans qualified for the special affordable housing goal. Fannie Mae has not used this calculation to estimate affordability for individual units.

The housing goals proposed rule, consistent with FHFA's current rule, states that the affordability of a unit may be estimated "by multiplying the number of rental units with missing affordability information in properties securing multifamily mortgages purchased by the Enterprise in each census tract by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal."[26] Where possible, Fannie Mae requests that FHFA use the same methodology for estimating affordability for purposes of the duty to serve underserved markets, to prevent confusion and additional regulatory burden. Where not possible, Fannie Mae anticipates working with FHFA to determine other appropriate methodologies.

2. Limit on Counting Units with Missing Data

Rental units with missing data have been a particular challenge in the housing goals data collection process. Certain types of rental units, such as assisted living units and military housing, serve large proportions of low- and moderate-income individuals, but the rent structure is created to fit the special circumstances of the residents. As a result, a typical rent structure does not exist for these units, and estimation is the only option. In addition, lenders frequently do not capture rental data for single family, owner-occupied properties because such data is not needed for underwriting. As the secondary market purchaser, Fannie Mae does not have a relationship with the borrower, and is therefore not able to obtain information that the lender does not request during the application process.

Fannie Mae has developed processes to ensure that lenders provide the greatest amount of information possible so that mortgages can count toward performance under the housing goals. However, the same obstacles to obtaining data will also impact data collection for meeting the duty to serve underserved markets. Fannie Mae requests that FHFA recognize the inherent challenges to obtaining rental data, and refrain from imposing a limit on the estimation methodology.

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[25] Proposed 12 C.F.R. § 1282.38(c)(2).
[26] Proposed 12 C.F.R. § 1282.15(e)(1).

III. Other Specific Comments

In addition to FHFA's requests for comment on the Proposed Rule, Fannie Mae is providing the following comments on aspects of the Proposed Rule that would benefit from further clarification. Also addressed in this section are Fannie Mae's comments on implementation issues, along with recommendations for addressing these issues.

A. Market Sizing

FHFA expects Fannie Mae to evaluate both current activities in underserved areas and potential opportunities to increase those activities. Each market presents unique challenges for market sizing.

For rural areas, market sizing based on a combination of Home Mortgage Disclosure Act ("HMDA") data and RUCA codes should provide a fairly complete estimation until the Rural Development property locater is able to address multiple address lookups or another technical solution is identified. Fannie Mae anticipates working with FHFA and USDA to obtain a list of qualifying rural areas. The eventual move to a USDA property-based classification system still leaves open a need for a census-tract based urban-rural classification scheme that could be used in conjunction with HMDA data for market-sizing purposes.

For the manufactured housing market, existing data does not allow Fannie Mae to conduct routine market sizing activities. Most data on this market is collected under HMDA. However, HMDA does not require lenders to distinguish between real estate and personal property manufactured housing, so there is currently no precise source of data.

Sizing the affordable housing preservation market will also present substantial challenges because of the variety of activities that could be considered part of that market and the long-standing difficulty in obtaining data on the multifamily market.

Fannie Mae anticipates working with FHFA after the publication of the final rule to determine methodologies and sources of data that will provide an appropriate basis for performing market sizing, and will also promote broader public understanding of the challenges to, and effective approaches for, meeting the duty to serve manufactured housing, affordable preservation, and rural areas. In the meantime, Fannie Mae anticipates evaluating those areas where it can provide substantial benefits in the short term, and measuring its performance in these markets on a program-by-program basis.

B. Counting Considerations

1. Government Risk Sharing and Participation Agreements

Commenters on the ANPR asked FHFA to articulate the USDA programs that would count toward meeting the duty to serve rural markets. In response, the preamble to the Proposed Rule states:

> For purposes of the duty to serve, it is not necessary that FHFA specifically determine the eligibility of individual federal, state or local programs that support rural housing. As a general matter, where: (1) an Enterprise's mortgage purchase, or other activity related to such mortgage, is authorized under the Charter Act; (2) the property financed is residential real estate located within a rural area; and (3) the income of the residents falls within the duty to serve income limits, the units financed may be considered. . . .[27]

The Proposed Rule further states that the Enterprises have latitude to determine what activities to engage in to meet the duty, including marketing products and purchasing USDA-guaranteed loans. Notwithstanding this preamble language, the Proposed Rule indicates that other requirements will apply that would prevent mortgage purchases under USDA programs from counting toward performance. Specifically, the Proposed Rule adopts some of the same requirements and restrictions as appear in the housing goals regulation.

The Proposed Rule states: "Mortgages purchased under risk sharing arrangements between an Enterprise and any federal agency under which the Enterprise is responsible for a substantial amount (50 percent or more) of the risk shall be treated as mortgage purchases."[28] The Proposed Rule also states: "Participations purchased by an Enterprise shall be treated as mortgage purchases only when the Enterprise's participation in the mortgage is 50 percent or more."[29]

Evaluating performance in meeting the duty to serve the underserved markets will be very different from calculating Fannie Mae's purchase percentages to determine compliance with the housing goals because there will be no numerical goals associated with the duty to serve. While the 50 percent limitation in the housing goals rule was put in place to determine how many units would count toward performance under numerical goals, that consideration is unnecessary in determining whether a transaction satisfies the duty to serve.

As discussed in detail below, because the focus of the duty to serve underserved markets is to cause the Enterprises to facilitate and lead a secondary market in these underserved areas, risk sharing and participation arrangements are crucial to increasing primary

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[27] 75 Fed. Reg. at 32,109.
[28] Proposed 12 C.F.R. § 1282.39(c).
[29] Proposed 12 C.F.R. § 1282.39(d).

market mortgage originations. Primary lenders seek a secondary market outlet to leverage those arrangements, which creates more liquidity to serve those markets. These types of transactions should meet the duty to serve underserved markets regardless of the amount of risk held by an Enterprise because the Enterprise's participation in the transaction is the crucial factor.

a) Risk Sharing

Proposed Section 1282.39(c) indicates that mortgages purchased under risk sharing arrangements between an Enterprise and any federal agency, whereby the Enterprise is responsible for less than 50 percent of the risk, will not be considered a mortgage purchase under the loan purchase assessment factor. However, various programs targeted to serve the rural and preservation markets could be excluded from consideration based on this statement. USDA's Section 502 and Section 538 programs provide a 90 percent government guarantee, but the private market must originate these products. The Enterprises' secondary market executions clearly increase private lender participation in these programs and assist rural markets and affordable housing preservation. This is also true for certain Veterans Administration programs and FHA programs, as well as single family loans guaranteed under HUD's Section 184 Indian Home Loan Guarantee Program and multifamily loans under HUD's Section 542(b) risk sharing program. Given Congress' emphasis on facilitating a secondary market for affordable mortgages in rural areas, it would be counterproductive to exclude these products from contributing toward performance.

b) Participation Agreements

Proposed Section 1282.39(d) states that a participation in a mortgage will be treated as a mortgage purchase if the Enterprise's participation is 50 percent or more. But similar to the risk sharing arrangements, this percentage limitation should not apply so long as the underlying transaction serves one of the designated underserved markets.

For example, Fannie Mae currently purchases participation certificates in transactions originated by HFAs under HUD's Section 542(c) program. This program is the primary preservation program for many agencies, and serves to improve market liquidity for affordable multifamily transactions originated by state HFAs. Accordingly, Fannie Mae's purchases in this program play an important role in providing nationwide liquidity for affordable housing preservation.

Under this program, FHA guarantees 100 percent of the principal loan amount, and these transactions typically have many other layers of subsidy, including Section 8 contracts. A number of agencies focus their lending in this program on rural areas of their states, as those tend to have few other multifamily lending opportunities. Providing secondary market capital through this program both advances HFA preservation efforts in rural areas and allows Fannie Mae to engage in multifamily lending, with up to 40 year terms, in a safe and sound manner.

Fannie Mae believes that all federal, state and local government insured or guaranteed mortgage purchases within the designated underserved markets should contribute toward meeting the duty to serve the underserved markets. Flexibility in the risk sharing structures is necessary to encourage primary market lender participation, and a flexible secondary market execution provides these lenders with liquidity for their continued participation. Accordingly, Fannie Mae requests that FHFA remove from the final rule the limitations on risk sharing and loan participations.

2. Limitations on Certain Loan Transactions

FHFA published its proposed rule establishing housing goals for the Enterprises for 2010 and 2011 in February 2010.[30] Fannie Mae previously commented on that proposed rule. The Proposed Rule includes special requirements for loan purchases that adopt and incorporate language from the housing goals proposed rule.[31] Several of Fannie Mae's comments on the housing goals proposal relate to specific types of transactions, and are also applicable to the Proposed Rule.

- The housing goals proposed rule eliminated housing goals credit for subordinate mortgages. Fannie Mae requested that FHFA continue to allow multifamily subordinate loans to contribute toward goal performance because of the important role that subordinate loans play in the multifamily market. Fannie Mae stated that multifamily subordinate loans provide the benefits of a refinance to existing borrowers without additional transaction costs. A borrower may essentially refinance a loan by keeping the existing first mortgage in place and drawing additional funds through the subordinate loans without having to refinance the entire loan amount and incur prepayment premiums.

- The housing goals proposed rule would prohibit an Enterprise from including in housing goals performance any mortgage that was previously counted by either Enterprise, provided the mortgage was first counted within the preceding five years. Fannie Mae commented that this requirement would create substantial regulatory burden because counterparties would be required to research prior ownership of all loans before they could be sold to an Enterprise.

- The 1992 Act changed the method for calculating housing goals credit for the credit enhancement of HFA bonds. In its comment letter, Fannie Mae requested that the regulatory language addressing credit enhancement be changed to incorporate the statutory language.

- The housing goals proposed rule stated that the Enterprises may not include in performance purchases of mortgages financing properties that have not been certified for occupancy. Fannie Mae's comment letter requested that FHFA clarify the application of this requirement. Specifically, Fannie Mae requested

[30] 2010–2011 Enterprise Affordable Housing Goals; Enterprise Book-Entry Procedures, 75 Fed. Reg. 9,034 (proposed Feb. 26, 2010).
[31] Proposed 12 C.F.R. § 1282.39.

that FHFA clarify how the rule would apply to projects that are certified for occupancy in stages, and how to treat mortgage purchases if the property is certified for occupancy in a subsequent year.

For the same reasons set forth in Fannie Mae's comment letter on the proposed housing goals rule, Fannie Mae requests that FHFA remove or modify these provisions in the Proposed Rule.

3. Counting toward Multiple Assessment Factors

The Proposed Rule states that a "transaction or activity will only be considered under one assessment factor in a particular underserved market."[32] As a result, if Fannie Mae were to develop an enhancement or variance early in the year and take delivery later in the same year, Fannie Mae would have to choose whether to count the transaction toward the loan product assessment factor or the loan purchase assessment factor. This type of restriction could unnecessarily cause the Enterprises to consider timing development and deliveries for when the transaction or activity could count toward performance under the duty to serve. Fannie Mae believes that the restriction is unnecessary because Fannie Mae's activities and planned purchases will be set forth in the Plan that FHFA will have approved. Accordingly, Fannie Mae requests that subsection (e) be removed from section 1282.37 of the Proposed Rule.

4. FHFA's Consideration of Transactions Should be Tailored to Apply Only to the Loan Purchase Assessment Factor

Proposed Section 1282.37(b) lists those transactions that will "not be considered for purposes of the duty to serve underserved markets and shall not be considered for any assessment factor . . . ." This section is very similar to Section 1282.16(b) of the housing goals regulations. However, the housing goals rules are specifically focused on loan purchases, and several of the transactions listed as ineligible for housing goals credit are not mortgage purchase transactions, including commitments to purchase mortgages, options to acquire mortgages, and rights of first refusal. The reason for excluding these transactions from the housing goals calculation – that they are not mortgage purchase transactions – supports also excluding them from the loan purchase assessment factor, but not from all of the assessment factors.

Proposed Section 1282.37(b)(13) would also prevent an Enterprise from receiving loan purchase credit for five years after a product is developed if the development of the product helped to meet the Enterprise's duty in the year it was created. That section refers to: "[t]ransactions or activities for which either Enterprise previously received consideration under the duty to serve underserved markets within the five years immediately preceding the current performance year." Under the duties to serve, the Enterprises are expected to engage in a broad array of activities, some of which may be repeated annually, while the housing goals are limited to mortgage purchases within a

[32] Proposed 12 C.F.R. § 1282.37(e).

particular year. Denying consideration of all other aspects of transactions or activities for all assessment factors once the transaction or activity has received consideration under one assessment factor in one year will undermine Fannie Mae's ability to comply with its statutory obligation to reach out to a variety of market participants to increase the amount and type of assistance provided to families in underserved areas. Moreover, it would be impossible for Fannie Mae to know how Freddie Mac's product development, outreach and investment activities contributed toward meeting its duty to serve. Accordingly, Fannie Mae requests that this section be removed from the Proposed Rule.

C. Affordable Housing Preservation

1. Define Refinance to Include Recapitalization

The Proposed Rule discusses the risk that thousands of multifamily properties across the country will convert to market rate rents if borrowers are not able to refinance. The definition of refinance incorporated into the proposed rule is the definition that currently appears in the housing goals regulations: "*Refinancing* means a transaction in which an existing mortgage is satisfied or replaced by a new mortgage undertaken by the same borrower."[33] Recapitalization, which is also a significant need for multifamily properties that are carrying debt, may occur as the result of a change in ownership, and accordingly the regulatory definition would not be met. Because the Proposed Rule anticipates that purchasing refinance loans will contribute significantly to the Enterprises' performance in meeting the duty to serve the affordable housing preservation market, Fannie Mae requests that FHFA also recognize the importance of recapitalization to that market.

2. Appropriations Risk

The Proposed Rule addressed comments made in response to the ANPR that the Enterprises do not count all Section 8 payments as rental income because of the appropriations risk associated with the Section 8 payments. The Local Initiatives Support Corporation suggested that the Enterprises should change their underwriting practices to include as projected income the rents on a renewed Section 8 contract for at least the term of the contract. The Consumer Federation of America, Center for Responsible Lending, and National Consumer Law Center filed a joint letter and suggested that the Enterprises should not be able to count, toward meeting the duty to serve the preservation market, loans with reserve requirements that protect against appropriations risk.

In April 2009, Fannie Mae changed its policy on reserve requirements. The new policy provides that a restabilization reserve is not required for multifamily affordable housing mortgage loans with Housing Assistance Payment ("HAP") contracts unless, without regard to governmental appropriation conditions, the contract term is of shorter duration than the mortgage loan term.[34] In addition, Fannie Mae will underwrite to the higher of Section 8 or Low-Income Housing Tax Credit rents if the HAP contract term is longer

[33] 12 C.F.R. § 1282.2(b).
[34] Fannie Mae Multifamily Selling and Servicing Guide, Part IIIB, Ch. 7.

than the term of the loan. In either case the rent used cannot be above market rate, and waivers of contract term requirements may be granted on a case-by-case basis.

D. Evaluation

The Proposed Rule provides that the Enterprises will prepare a plan for meeting the duty to serve underserved markets. FHFA will measure the Enterprises' performance against the goals and benchmarks set forth in the plan. For 2010, the plan must be submitted as soon as practicable after publication of the final rule with the earliest feasible effective date.

1. Plan

Fannie Mae supports FHFA's proposal to require the Enterprises to prepare a plan for meeting the duty to serve underserved markets. Fannie Mae agrees that by developing a plan in consultation with FHFA, the company will be able to clearly delineate the steps it will take to meet its duty and FHFA will have an objective standard against which to measure Fannie Mae's performance.

2. Plan Timing

The 1992 Act requires that FHFA

> establish effective for 2010 and thereafter a manner for evaluating whether, and the extent to which, the enterprises have complied with the duty. . . . [T]he Director shall, for 2010 and each year thereafter, evaluate such compliance and rate the performance of each enterprise as to the extent of compliance. The Director shall include such evaluation and rating for each enterprise for a year in the report for that year submitted pursuant to section 1319(B)(a).[35]

FHFA must subsequently include in its report submitted pursuant to section 1324(b) a discussion of the extent to and manner in which the Enterprises are meeting the duty to serve underserved markets.[36]

Fannie Mae recognizes that to meet this statutory requirement, FHFA must receive a report on Fannie Mae's compliance with the duty to serve underserved markets for the year 2010, rate Fannie Mae's compliance, report that rating to Congress by June 15, and provide a discussion of Fannie Mae's performance to Congress by October 30.

Fannie Mae proposes that, to meet these obligations, Fannie Mae will prepare a plan, to be submitted as soon as possible after the publication of the final rule, that will describe Fannie Mae's activities to meet the duty for both the balance of 2010 and for 2011. Fannie Mae will then prepare a report, to be submitted to FHFA by April 30, 2011, that

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[35] 12 U.S.C. § 4565(d)(1).
[36] *Id.* § 4544(b).

will report on activities during 2010 and provide FHFA with the information necessary to meet its reporting obligations. Given the newness of the rule and the lack of market sizing data currently available, the first report submission for 2010 may include summary information rather than the more extensive narrative and transaction level data that will be required in subsequent annual reporting.

Because of existing timing realities, Fannie Mae has already begun to identify activities to meet the duty during 2010 and 2011. Early in 2011, Fannie Mae will also need to begin forecasting for 2012 and 2013, and preparing a plan that must be submitted to FHFA for approval no later than October 3, 2011.

E. Reporting

1. Reporting Frequency

The Proposed Regulation would require a comprehensive annual report on duty to serve performance for the prior year. The report would include narrative descriptions of activities, summary statistical data, and transaction level data. In addition, the annual report would include a discussion of market opportunities and the factors that influence those market opportunities, such as accounting requirements, pricing, and competition. In addition, the Proposed Regulation obligates the Enterprises to report quarterly on their performance toward meeting the duty to serve underserved markets beginning with the first quarter of 2011.

As compared to the quarterly mortgage reports, the reports on meeting the duty to serve underserved markets will be substantially more involved. Historically, Fannie Mae has provided summary tables quarterly and loan level data bi-annually to report on progress toward meeting the housing goals. Because reporting on progress toward meeting the duty to serve underserved markets will take more time and require input from business units throughout the company, much like preparing the Annual Housing Activities Report, Fannie Mae requests that reporting be limited to annual submissions and that quarterly reporting requirements be eliminated.[37]

a) Data Collection and Reporting System Set Up

Fannie Mae notes that it will be necessary to build additional processes for collecting and reporting on performance toward meeting the duty to serve underserved markets. Reporting on the duty will necessarily require more detailed analysis and explanations of activities and transactions, their status, and their expected impact. While Fannie Mae has many years of experience in developing, testing, updating, and monitoring the housing

[37] Fannie Mae notes that FHFA has proposed semi-annual housing goals reporting for the Federal Home Loan Banks. Federal Home Loan Bank Housing Goals, 25 Fed. Reg. 29,947 (proposed May 25, 2010). The proposed rule suggests that the frequency of reporting may be increased in future years if technological advancements make reporting less burdensome. *Id.* at 29,956. FHFA could also initially require less frequent reporting for the Enterprises on the duty to serve underserved markets, and determine in the future whether more frequent reporting would be appropriate.

goals systems to ensure that reports can be provided accurately and timely, the duty to serve underserved markets covers a much broader spectrum of activities, and new systems will need to be created to capture the additional information necessary for reporting.

b) Time to Prepare Reports

The Proposed Rule would require Fannie Mae to submit, in its quarterly reports, information on "transactions and activities undertaken pursuant to its underserved markets plan"[38] including "detailed information on . . . progress towards meeting the benchmarks and objectives in its plan."[39] By comparison, the housing goals reports only include data on completed purchases and only include statistical information as delivered by lenders through Fannie Mae's acquisition systems. Progress toward the goals can be assessed simply by comparing year-to-date purchase data with the goals set by FHFA.

Fannie Mae recognizes that the nature of the duty to serve underserved markets and the variety of activities that will help Fannie Mae to meet the duty do not lend themselves to a summary statistical report. Accordingly, Fannie Mae requests that FHFA initially adopt an annual reporting schedule because of the amount of time that will be necessary to prepare each report.

c) Quarterly Reporting Will Not be Complete or Useful

Fannie Mae further notes that quarterly reporting is not likely to provide useful information to FHFA on Fannie Mae's progress toward meeting the duty to serve underserved markets. Developing loan product variances and enhancements is a lengthy process that involves assessing the needs of lender partners, evaluating risk, and implementing operational changes. These activities may occur over a span of many months, and quarterly reporting may not be able to adequately capture the progress of the initiative. Planning and executing outreach activities can also occur over a period of many months, and information on the activities must be collected and analyzed before it could be presented in the report. Only the loan purchase assessment factor lends itself to quarterly reporting, and because that is only one of the four factors upon which Fannie Mae will be evaluated, it will not be able to provide a comprehensive view of Fannie Mae's performance on a quarterly basis.

2. Report Timing

The Proposed Rule adopts the timeline set forth in the proposed housing goals rule for the submission of reports. That timeline shortened, by 15 days, the deadlines for submitting quarterly and annual mortgage reports. As Fannie Mae stated in its comment letter on the proposed housing goals rule, the short annual report deadline will impact lenders and other Fannie Mae partners who must provide information necessary for reporting. The deadline proposed for year-end reporting on duty to serve performance will also impact

[38] Proposed 12 C.F.R. § 1282.66(a).
[39] *Id.*

Fannie Mae operations and end-of-year transactions, as the timeline for completing transactions and collecting data will not only be compressed, but will occur at the same time that housing goals reporting and financial reporting are taking place.

In its housing goals comment letter, Fannie Mae requested that FHFA retain the 75-day deadline for annual mortgage reports. Fannie Mae also requested that, if FHFA shortened the deadline for submitting quarterly mortgage reports, that FHFA also reduce the amount of information required to be reported on a quarterly basis. No determination has yet been made on this issue. However, Fannie Mae requests that, to reduce overlap in preparing the multiple reports that must be completed during the first quarter of each year, FHFA set the due date for the annual report on duty to serve performance for a date that is at least 30 days after the date that the annual mortgage report must be filed.

3. Confidentiality

The Proposed Rule indicates that the primary purpose of the underserved markets plan is to set forth goals and benchmarks against which FHFA will evaluate Fannie Mae's performance in meeting each of the underserved markets. The goals and objectives set forth in the plan should be sufficiently specific to enable FHFA to judge the merits of, and compliance with, the plan. To meet these requirements, Fannie Mae anticipates that the plan will include information that for competitive reasons cannot be made public. Fannie Mae, therefore, requests that FHFA specify in the final rule that FHFA will maintain the confidentiality of the plan.

4. Plan Amendments

Community Reinvestment Act regulations adopted by the banking regulators provide that a bank may submit an amended strategic plan to its regulator for approval if a material change in circumstances has occurred.[40] Fannie Mae anticipates that it will periodically review its underserved markets plan to determine whether market estimates were accurate, to assess performance against goals, and to update business forecasting. Fannie Mae requests that FHFA include, in the final rule, language similar to that adopted by the banking regulatory agencies that permits an amendment to the plan under appropriate circumstances.

IV. Conclusion

Fannie Mae appreciates the effort that FHFA exercised in crafting this Proposed Rule, and would welcome the opportunity to discuss any issues raised by these comments. The duty to serve underserved markets will play an important role in expanding housing opportunities for low-income families, and Fannie Mae looks forward to working with its network of partners, including lenders, non-profit organizations, and state and local governmental agencies, to address the needs of these families.

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[40] *See, e.g.*, 12 C.F.R. § 25.27 (2010).