Department of
Housing Preservation
& Development
nyc.gov/hpd

**RAFAEL E. CESTERO**
**Commissioner**

**Office of the Commissioner**
**100 Gold Street**
**New York, N.Y. 10038**

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

**RE: RIN 2590–AA27, Notice of Proposed Rulemaking on the Enterprise Duty to Serve Underserved Markets**

Date: July 26, 2010

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The Department of Housing Preservation and Development (HPD) of the City of New York is pleased to have the opportunity to respond to the Federal Housing Finance Agency's (FHFA's) request for comments published in the *Federal Register* on June 7, 2010. The Notice of Proposed Rulemaking (Notice) seeks comments on the proposed structure for evaluation of Fannie Mae and Freddie Mac's duty to serve underserved markets.

The New York City Department of Housing Preservation and Development is the largest municipal developer and preserver of affordable housing in the United States. HPD's mission is to promote quality housing and viable neighborhoods for New Yorkers through dozens of targeted development programs; enforcement of housing quality standards; and preservation through education, outreach, grants and low-interest loans. HPD has provided over $6.3 billion since 1987 to support the repair, rehabilitation and new construction of hundreds of thousands of units of housing.

With a workforce of approximately 2,500 staff, HPD is in the midst of Mayor Bloomberg's ambitious 10-year campaign, the New Housing Marketplace Plan. One component of this housing plan is the Overleveraged Properties Initiative (OPI), a method by which HPD identifies and monitors properties showing signs of financial and many times also physical distress. Properties identified by OPI are targeted for code enforcement to prevent a worsening of distress and are considered for a number of preservation programs and tools. OPI's goal is to maintain safe living situations for tenants as properties work through financial and physical issues.

The overleveraged building stock encompasses multifamily properties that have recently been refinanced or purchased at inflated values and carry a level of debt that is unsustainable and potentially leads to physical distress for the residents. The risks of overleveraged properties are twofold: (1) In order to pay high mortgage payments, owners may attempt to illegally raise rents and vacate apartments; or (2) owners may divert revenue intended for property maintenance, neglecting the physical needs of the buildings.

HPD has created a system of indicators of financial and physical distress to identify multifamily buildings in distress and to monitor the buildings over time. The indicators are based on a combination of factors including: mortgage related lis pendens filings or foreclosure actions; high sales price to income ratios; buildings placed in HPD's Alternative Enforcement Program; the number of housing code violations per unit; and active comprehensive litigation cases.

The City has committed $750 million of resources to address the issue of overleveraged properties. These funds are a combination of acquisition financing available through the NYC Acquisition Fund and the NYC Housing Development Corporation as well as HPD' s preservation finance programs: the Preservation Loan program and 8A program. These financial tools are being targeted to assist responsible owners purchase notes and/or properties in addition to making needed repairs.

*GSE Affordable Housing Preservation Model*
On the leading edge of the overleveraged building crisis are 25 properties in the South Bronx which were owned by a real estate investment company, 10 of which were placed on the city's worst buildings list in 2007 and 2008, racking up 5,000 serious and immediately hazardous housing maintenance code violations. Fannie Mae bought the loans for these buildings totaling $29 million from 2006 to 2007. The buildings had fallen into severe disrepair, exposing residents to extremely poor living conditions. At one of the buildings, residents endured winter days without heat and hot water. At another building, the occupants of one apartment abandoned it after parts of the ceiling collapsed. In August of 2009, the City of New York worked with Fannie Mae to cancel the auction which was scheduled to sell the buildings online as part of the foreclosure process.

Fannie Mae and HPD collaborated to identify a new, responsible owner to maintain and rehabilitate the buildings as quickly as possible. Fannie Mae and HPD worked together to create a list of eligible bidders for a restricted bid. Omni New York LLC – led by former New York Met Maurice "Mo" Vaughn – was chosen by Fannie Mae as the successful bidder. The collateral for this portfolio is made up of fourteen individual properties consisting of 416 units with mortgage debt totaling $23.8 million, which Omni has purchased from Fannie Mae and Deutsche Bank at a supportable price given tenancy, market rents and building conditions through the bidding process. Omni committed to invest up to $1 million in immediate emergency repairs following this initial transaction and then worked to obtain the deed to each of the properties in order to take title and become the long-term owner. Fannie Mae's actions demonstrated a true commitment to affordable housing preservation and neighborhood stabilization.

FHFA can stabilize communities across the nation by incentivizing refinancing and preservation of overleveraged multifamily properties by the Enterprises. This may include incentives to transfer troubled multifamily buildings to responsible preservation buyers and recognition of responsible and proactive action taken by Enterprises in cases like the restricted bid offered by Fannie Mae for the South Bronx properties.

*Expansion of "At-Risk" Properties in Proposed Affordable Housing Preservation Market*
FHFA's proposed rulemaking states that a property becomes "'at risk'' either when its rent affordability restrictions expire, or because mismanagement or disinvestment cause the property to deteriorate and become unsafe or uninhabitable." In many cities across the country, excessive and unsupportable debt and resulting

physical deterioration is also putting buildings at risk. FHFA should consider defining “at-risk” buildings for primary focus of affordable housing preservation to include this third contributing factor and to expand the Enterprises’ proposed duty of affordable housing preservation to include one or more of the following options to address the overleveraged multifamily building problem, which is of growing concern across the country.

1. Multifamily First Look Program: Similar to Fannie Mae’s First Look Initiative for single family properties, the Enterprise will notify the local housing agency of a note sale on all multifamily properties prior to marketing the debt. Upon receipt of the bid package, the local housing agency will have twenty business days to assess the property and submit a bid. During this period, the Enterprise will grant the local housing agency access to the building to conduct an appraisal and inspections and will provide the local housing agency with a complete bid package, including all income and expense information.

   The purchase price will be negotiated between the Enterprise and the local housing agency based upon the property value, scope of needed rehabilitation work, and outstanding mortgage balance. The local housing agency will be permitted to share information with a third party that the local housing agency supports as the possible owner and manager of the property. The third party entity must be deemed a “Qualified Developer” by the local housing agency. In NYC, HPD issued a request for qualifications for a Multifamily Preservation Program to identify Qualified Developers. Qualified Developers may be defined by criteria such as: (i) whether the buyer is an owner or an affiliate of an owner of the foreclosed at-risk property, (ii) physical and financial condition of other properties owned or managed by the buyer, (iii) whether the buyer has or has had substantial municipal arrears on any other property owned by the bidder, (iv) residential management experience, (v) financial capacity, (vi) rehabilitation experience, (vii) ability to work with government and community organizations, (viii) neighborhood ties, (ix) ability to finance or obtain financing for any required rehabilitation, and (x) intent and ability to improve, manage and maintain the foreclosed at-risk property. If the local housing agency decides to purchase the property, the agency itself may purchase the note to later be transferred to a Qualified Developer, or may designate the Qualified Developer as the initial purchaser.

   This strategy does not require the local housing agency to commit to a First Look agreement for every multifamily property for which the Enterprise plans the sell the note. Upon notification of the note sale, the local housing agency will conduct a preliminary review of the property to determine if it is an “at risk community asset.” An “at-risk community asset” is a property with some degree of financial and/or physical distress that is at risk of further distress if acquired by an irresponsible and/or speculative owner. “At-risk community asset” may be defined by criteria such as: (i) debt to income ratio exceeding a reasonable standard (ii) the number of open violations of record of the housing maintenance code or building code, (iii) the amount in arrears of any municipal taxes, liens or other charges; (iv) the number of occupied units, (v) the physical condition of the property, and (vi) the lien to value ratio of the property. If a property is not deemed an “at-risk community asset”, the local housing agency will inform the Enterprise within 10 business days of notification.

   The local housing agency will be given this same First Look opportunity in cases where the Enterprise is going to begin foreclosure proceedings on a multifamily property. This mirrors the HUD foreclosure process, where local governments are allowed a right of first refusal when HUD intends to foreclose on a property. Under this process, the price is negotiated between HUD and local governments based on a building's physical needs. This process is already well established with HUD and has resulted in the successful disposition of many multifamily properties in New York City alone.

2. Restricted Bidder Pool I: The Enterprise will notify the local housing agency of a note sale on all multifamily properties prior to any further action to publicly market the debt. The local housing agency will conduct a preliminary review of the property to determine if it is an "at risk community asset." For those properties that are deemed to be "at-risk community assets", the Enterprise and the local housing agency will coordinate to solicit bids from a list of Qualified Developers. As in the HUD foreclosure process, post-closing required repairs are detailed in the bidding package, survive the sale, and are recorded with the deed.

3. Restricted Bidder Pool II: The Enterprise will notify the local housing agency of a note sale on all multifamily properties prior to any further action to publically market the debt. The local housing agency will conduct a preliminary review of the property to determine if it is an "at risk community asset." For those properties that the local housing agency deems to be "at-risk community assets", the Enterprise and the local housing agency will coordinate to solicit bids from both the local housing agency's Qualified Developers list and entities proposed by the Enterprise. Under this strategy, the Enterprise can propose bidders that are not pre-qualified by the local housing agency. The Enterprise will grant the local housing agency fifteen business days to review the bidders' qualifications. Upon completing the vetting process, the Enterprise will solicit bids from all pre-qualified developers. As in the HUD foreclosure process, post-closing required repairs are detailed in the bidding package, survive the sale, and are recorded with the deed.

The three strategies outlined above each have a common goal: to maintain and preserve safe, affordable housing. An effective collaboration between Enterprises and local housing agencies will successfully place financially and/or physically distressed buildings in the hands of responsible owners and managers. By ensuring that responsible owners acquire these multifamily at-risk community assets, Enterprises and local housing agency can effectively work together towards ending the cycle of perpetually overleveraging buildings.

I hope these comments are helpful to you as you develop the regulations and guidelines for these important new Enterprise duty to serve underserved markets requirements. I am more than happy to discuss these comments in more detail with FHFA and the Enterprises.

Sincerely,

Rafael E. Cestero
Commissioner