Jul 16, 2021

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Federal Housing Finance Agency, Eighth Floor
400 Seventh Street, S.W.
Washington, D.C. 20219

Attention: Duty to Serve 2022-2024 RFI

Dear Ms. Barringer,

The National Community Reinvestment Coalition (NCRC) appreciates the opportunity to publicly comment on the Federal Housing Finance Agency’s (FHFA) request for input on the Fannie Mae and Freddie Mac Proposed 2022-2024 Duty to Serve Plans. NCRC has dedicated itself to the mission of building and protecting wealth in America’s underserved communities for nearly 30 years.

The underserved market plans developed by Fannie Mae and Freddie Mac (“the Enterprises”), like the setting of Enterprises’ housing goals, represent an opportunity for the companies to fulfill the tremendous potential of their affirmative obligations to address the most pressing affordable housing challenges across the single-family and multifamily markets. Both statutes require, among other provisions, that the Enterprises provide “leadership” in order to facilitate mortgage credit to lower-income families and communities and communities of color.\(^1\) If they are going to indeed exhibit greater leadership in the underserved markets, it is critical that FHFA itself revisit a number of the agency’s conservatorship policies in recent years that hamstring the companies, have and will stymie the ability of the Enterprises to execute robust affordable housing programs.

Should the Enterprises include additional explanation of how FHFA regulations, policies, and directives impact their proposed plan activities and objectives?

Yes, and it is important to address this question at the outset. In many instances, FHFA policies are a barrier. And, the lack of vision and rigor in the Enterprises’ 2022-2024 underserved market plans reflect the restrictions imposed by the agency’s policies. Following the financial crisis and over the course of FHFA’s conservatorship of the Enterprises, many borrowers have been “boxed out” of the mortgage market by

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\(^1\) 12 U.S.C. 4565(a)(1) states: To increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets, each enterprise shall provide leadership to the market in developing loan products and flexible underwriting guidelines...” [emphasis added]

And, among other steps, in 12 U.S.C. 4565(b)(3)(A) directs the Enterprises to take affirmative steps “…to assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families...”
extraordinary credit standards\(^2\) and the extent of risk-based pricing\(^3\) at the Enterprises and in the overall mortgage market. At times, their affordable housing staff ebbed; there have been restrictions on loan product development and pilots developed in response to the Enterprises’ market research identifying gaps in access to mortgage credit and affordable housing challenges; their contributions to the Housing Trust Fund and the Capital Magnet were suspended for a period and stakeholder outreach pared back; a 250% increase in guarantee fees since 2009 and the move to risk-based pricing has been compounded by the reaction of private mortgage insurers to FHFA’s Private Mortgage Insurer Eligibility Requirements.

While we have supported a capital buffer, FHFA’s December 2020 capital rule imposes bank-like capital requirements that will increase mortgage costs and reduce the availability of credit for LMI and borrowers of color in underserved markets. The recent changes to the FHFA-Treasury Preferred Stock Purchase Agreements (PSPAs), capping the Enterprises multifamily business and their purchases of some single-family mortgages based on loan-to-value (LTV), debt-to-income (DTI) and credit score, among other provisions, will also limit the Enterprises ability to reach LMI home buyers and borrowers of color going forward. Fannie Mae reported that based on FHFA’s interpretive guidance and an initial assessment of their purchase activities, they are not in compliance with the new LTV, DTI and credit score restrictions on their single-family business.\(^4\) Presumably, they will have to shrink their business to meet these requirements. Freddie Mac has reported that “risk appetite constraints” may constrain their affordable housing activities in the future.\(^5\)

Quite simply, FHFA’s policies are constraining the ability of the Enterprises to meet the affordable housing mission in their charter and to increase liquidity across the underserved markets. These are some immediate steps that FHFA should take to facilitate the Enterprises’ duty to serve work:

- Consistent with the agency’s recent and very constructive steps to clarify and strengthen its fair lending oversight and related reporting by the Enterprises, FHFA should also immediately undertake and publish a related fair lending analysis of the agency’s recent conservatorship policies, including any conducted by the Office of Fair Lending Oversight.\(^6\)
- Revise the product and program constraints included in the PSPAs as well as the agency’s interpretative guidance and other direction implementing the volume limits and other provisions in the January 2021 amendments. Several provisions of the PSPAs will have a disproportionate impact on borrowers of color and the

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\(^6\) See e.g. *Joint letter urging an impact analysis of the FHFA capital and liquidity policy changes* (August 10, 2020) https://ncrc.org/fhfa-re-proposed-capital-rule-for-the-enterprises-sign-on-letter/
Enterprises cross-subsidization strategy.\textsuperscript{7} The Enterprises should also be able to dispose of assets below market value, which can facilitate donations and revitalization efforts with local nonprofits.

✓ Refrain from finalizing new restrictions on the Enterprises affordable loan product development and activities and particularly those that discourage the Enterprises’ pilots and test and learn activities based on market research and gaps in access to affordable mortgage credit for low- and moderate income (LMI) borrowers and communities, including borrowers and communities of color.

✓ Reopen and revise the bank-like capital requirements imposed by FHFA’s December 2020 capital rule as well as other loan level pricing policies in order to encourage loan purchases in underserved markets. We welcome the agency’s decision this week, for example, to end the Adverse Market Refinance Fee beginning August 1.

✓ Allow targeted equity investments that reach the underserved markets. Equity investments can be particularly instrumental in tertiary markets and smaller and legacy cities. Equity investments can also be instrumental in nonprofit capacity-building. For example, the Enterprises have been an early investor in Community Development Financial Institutions (CDFIs) as a way to attract other investors, made deposits, and invested in their stock as non-controlling owners.

✓ FHFA should release the duty to serve market level ratings for 2018, 2019 and 2020, the scores assigned to each objective, any explanatory materials related to scoring as well as any analysis around the infeasibility of continuing various activities in underserved markets. FHFA should also update the Public Use Database to include flags for all statutory and regulatory duty to serve activities.

✓ Re-evaluate the 2020 changes to the Duty to Serve Evaluation Guidance to ensure they are designed to encourage the Enterprises to develop ambitious underserved market plans and reward high impact activities.

Are the proposed plan objectives likely to increase liquidity in the applicable underserved market segment? Are there other activities and objectives the Enterprises should consider adding to their plans?

While both Fannie and Freddie continue to provide critical financing support for manufactured housing, affordable housing preservation and rural housing, the proposed plans fall short of exhibiting the kind of market leadership that will demonstrably increase the liquidity of mortgage investments and improve investment capital to the underserved markets. The loan purchase targets, loan product development and other activities proposed for the underserved markets can and should be more robust and rise to the national urgency around both affordable housing and racial equity.

**Loan purchases across all of the underserved markets should be improved**

In many instances, the Enterprises have relied on unreasonably low baselines to set low loan purchase target. The rural single-family loan purchase for 2022-2024 should be increased, for example. The targets are below their 2020 purchases and some are below their 2019 purchases. The Enterprise should also improve their purchases and outreach activities in high needs rural areas.

The loan purchase targets for affordable housing preservation are also unacceptably low, and particularly when compared to their 2018-2020 plans. Freddie must add loan purchase targets and other objectives for the distressed property market. We appreciate both Enterprises including shared equity objectives, but they should set out clearer and more ambitious plans for the shared equity market and higher loan purchase targets. Fannie should again set a loan purchase target for energy and water efficiency upgrades. We also concur with the comment submitted by the Housing Assistance Council that the Enterprises should set stronger purchase goals and investment targets for rural rental housing, for purchase loans secured by Section 515 properties, for housing credit properties with expiring use restrictions, and provide more support for the CDFIs that serve these markets and high needs rural areas.

Freddie Mac loan purchase baseline of 4,304 loans for manufactured housing is too low and based on a five-year average. The Smart Criteria outlined in the Duty to Serve Evaluation Guidance identifies a three-year baseline as the default way to assess a proposed target.\(^8\) Freddie has also set a low purchase target that allows the company to buy fewer loans than it did in two of the prior three years, and still never exceed two-thirds of its 2020 volume. Setting ranges further weakens its plan.

We support the commitments by both Fannie and Freddie to expand their loan purchases in manufactured housing communities (MHCs) with tenant site lease protections (TSLPs). The Enterprises should create price and other incentives that facilitate adoption of these minimum standards across the market and publish research and insights on these communities, including around differences in loan performance. The Enterprises should also suspend guaranteeing loans to firms with a track record of substantial rent increases, high fees and/or other abusive lease provisions.\(^9\)

The Enterprises should also provide greater support for mission-driven ownership of MHCs and increase their very low loan purchase targets for MHCs owned by a governmental entity, nonprofit or residents. The Enterprises should also assist these communities in making a successful transition from corporate ownership by, for example, providing grants for technical assistance to help evaluate financing options and


various professional services, and by facilitating the investment capital needed to finance the major community upgrades that often trigger a sale.10

**A stronger commitment to affordable loan products is needed**

The Enterprises have a long history of developing affordable loan products based on market research that respond to gaps in the mortgage market. The Enterprises should consider reinstituting past products that have had a demonstrated track record of reaching the underserved markets, including: the Home Stay mortgage product, location efficient mortgage products, modifiable mortgages, working mortgages, a range of Native American mortgage products including those customized to various tribes, sweat equity loan products, and products developed with nonprofits around workforce housing. The Enterprises have also had a number of construction lending products, including those targeted at nonprofit developers undertaking rehabilitation and renovations, those that support bridge financing, acquisition development, lines of credit for producing lower-income housing, and credit enhanced municipal bonds. The Enterprises must continue and enhance their work to facilitate the market for small mortgages.

While there are a number of challenges in the manufactured housing market and the CHOICEHome (Freddie) and MH Advantage (Fannie) products11 have had slow adoption, we urge the Enterprises not to abandon these products. They offer flexible underwriting and stimulate construction of higher-quality housing.12 The Enterprises should continue to retool the products based on feedback from lenders, retailers and other stakeholders and consider how to balance strong construction standards with greater affordability for home buyers.

We have expressed concern about chattel lending given the paucity of borrower protections in the market, but chattel loans constitute 80% of all loans to purchase manufactured housing. In addition, manufactured home purchases by Black home buyers, for example, are half as likely as those bought by White home buyers to be secured by land.13 We have concerns around the loan terms and access for borrowers of color in the manufactured housing market. Recent mortgage data, for example, revealed that for homes titled as personal property, Black borrowers paid 38 more basis points on average than White borrowers.14 For homes titled as real property, Black borrowers paid 136 basis points more on average than did White borrowers.15

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12 Federal National Mortgage Association. “Originating & Underwriting: Manufactured Housing Financing Affordable Financing Options.” Mortgage Products, 2021. [https://singlefamily.fanniemae.com/originating-underwriting/mortgage-products/affordable-financing-options](https://singlefamily.fanniemae.com/originating-underwriting/mortgage-products/affordable-financing-options). Properties that are eligible for MH Advantage™ financing are designated as such by the manufacturer. MH Advantage™ offers higher loan-to-value ratios (up to 97 percent), and reduced pricing in the form of waived standard manufactured housing loan level price adjustments (0.50 percent) and reduced mortgage insurance coverage requirements for fixed-rate terms.


14 Ibid.

15 Id.
The Enterprises have done significant work in chattel loan market and should provide better insight into why they are not proposing duty to serve activities in their 2022-2024 plans. After substantial research, outreach and preparation to enter the market, Fannie reported further work infeasible in 2019 and 2020. FHFA should also provide better insight into their guidance to Fannie Mae and Freddie Mac on purchasing chattel loans with stronger consumer protections and whether the agency itself raised safety and soundness or other objections to the Enterprises engaging with the market.

The Enterprises underserved market plans and duty to serve work should advance racial equity

The Biden administration and the U.S. Congress have set out a robust agenda to address the nation’s affordable housing crisis and have prioritized advancing racial equity and closing the nation’s racial wealth gap. Last week, the House Financial Services Committee also set forth a package of bills proposing historic investments in affordable housing and proposed targeted down payment assistance designed to help bridge the nation’s gaping homeownership divides. Policy questions related to the accessibility and affordability of mortgage credit are central to how LMI families and families of color access the wealth-building opportunity of homeownership and ascend the ladder of economic mobility.

The Enterprises’ must play a central role in advancing racial equity. More home buyers have been relying on the conventional mortgage market, with conventional mortgages making up a growing share of home purchases. Together, the Enterprises provide approximately 40% of loans targeted towards low- and very low-income borrowers, supporting other public, and private programs. However, their record of financing Black homeownership, for example, has been notably poor. Only 4.8% of Fannie Mae guarantees and 3.6% of Freddie Mac’s were for home purchase loans to Black borrowers, and 4.1% and 3.7% of refinance loans purchased, respectively. In 2020, 3.06% at Fannie Mae and 3.28% at Freddie Mac were for home purchase loans to Black borrowers, and 2.64% and 2.97% of refinance loans acquired, respectively. In addition, the share of their business with credit scores under 700 fell from 37% to 14% from 2008 to 2020. This is particularly worrying considering that more than 40% of all credit scores nationally fall below 700.

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16 Fannie Mae’s 2019 Quarterly Report on chattel 2019 reported: “Most critically, Fannie Mae’s loan purchase is subject to review and nonobjection from FHFA before it can purchase loans... uncertainty and time commitments related to this regulatory oversight introduce potential challenges for meeting the 2019 loan purchase target.”
18 Fannie Mae’s comment letter to the FHFA on the Enterprise capital requirements.
19 FHFA Annual Housing Report 2020, at p. 11, Table 6 (October 2020).
https://medium.com/@USTreasury/housing-finance-reform-access-and-affordability-in-focus-d559541a4cdc
The Enterprises’ duty to serve planning presents an opportunity for the Enterprises to enunciate a vision and incorporate activities focused on better serving borrowers and communities of color. For example, how the Enterprises will improve their purchases and outreach in the more than 2,000 rural and small-town census tracts where racial and ethnic minorities make up the majority of the population.

We supported the Enterprises adding regional economic diversity (RED) to the prior cycle and are pleased that both Enterprises will continue loan purchases to further this important objective in 2022-2024. The Enterprises should consider and publish how their RED activities around affordable housing preservation are improving liquidity and investment capital in communities of color and how these activities are supporting the work of local jurisdictions pursuant to HUD’s Affirmatively Furthering Fair Housing regulations.

The Federal Reserve is leading a discussion on how modernization of the Community Reinvestment Act (CRA) regulatory framework might better address ongoing systemic inequity in credit access. The Enterprises should evaluate how their market research and other duty to serve activities can inform and support the work the prudential regulators are doing to implement a CRA that better serves borrowers and communities of color. Freddie Mac has done significant research identifying mortgage-ready millennials of color in markets around the country, with affordability being a key barrier they face to achieving homeownership. The Enterprises should set out affordable housing preservation and other duty to serve activities that are focused on connecting more mortgage-ready millennials of color to affordable homeownership opportunities. FHFA and the Enterprises should consider proposing additional underserved markets to Congress as allowed under 12 U.S.C 4565(c), such as Black homeownership.

**Conclusion**

The Enterprises own or guarantee approximately $6 trillion in mortgages. That includes about 43% of multifamily units, about 8.6 million households, and more than half of single-family mortgages. FHFA has acknowledged that the agency’s policies help set standards for the entire mortgage market. Through their 2022-2024 underserved market plans, the Enterprises have tremendous power to ensure that LMI borrowers and communities and borrowers and communities of color have equitable and affordable access to the mortgage market as the nation recovers from the COVID-19 crisis. While FHFA and the Enterprises are taking critically important steps to address issues around mortgage servicing and loss mitigation, the scale of the COVID-19 public health and economic crisis call for FHFA to revisit their conservatorship policies and the Enterprises strengthen their commitment to addressing the nation’s most pressing credit access and affordability challenges.

If you should have any questions, please feel free to contact Gerron Levi, our Senior Director of Government Affairs or Adam Rust, Senior Policy Adviser at 202-628-8866.

Sincerely,

Jesse Van Tol