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October 5, 2009

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

Attention: Comments/RIN 2590-AA10

RE: Record Retention
Notice of Proposed Rulemaking; Request for Comments

Dear Mr. Pollard:

Fannie Mae appreciates the opportunity to submit comments in response to the Notice of Proposed Rulemaking; Request for Comment, published on August 4, 2009¹ (the "Proposed Rule"), in connection with record retention requirements to be implemented by the Federal Housing Finance Agency ("FHFA"). The Proposed Rule is substantially similar to the regulations adopted by the Office of Federal Housing Enterprise Oversight ("OFHEO") in October 2006.²

The primary difference between the Proposed Rule and OFHEO's regulation is the addition of proposed section 1235.6, "Access to Records." This section specifies that records must be readily available for inspection, upon request by FHFA, within a "reasonable period." The regulation presumes that a "reasonable period" is either one business day, if the request is made in connection with an on-site examination, or three business days if the request is made outside of an on-site examination. Fannie Mae agrees that having records available within a reasonable period of time is necessary for FHFA to exercise its supervisory functions. As set forth below, however, the presumptions are not consistent with Fannie Mae's experience or FHFA's prior expectations, and would place an undue burden on Fannie Mae.

Production of Records

Fannie Mae receives and responds to document requests by FHFA on a regular basis, and produces a substantial amount of information for FHFA review. In 2008, Fannie Mae provided nearly 3,000 documents in response to FHFA requests and other requirements. In 2009, Fannie Mae has already provided over 5,650 total documents to FHFA. The

¹ 74 Fed. Reg. 38559 (Aug. 4, 2009).

² 12 C.F.R. §§ 1732.1-1732.10.

company anticipates that requests for information will continue to increase into the future.

Fannie Mae produces documentation in response to three types of directives: (1) requests by FHFA at the initiation of an on-site examination, (2) routine filing requirements and requests from FHFA, and (3) special requests for information, analysis or reports. The amount of time necessary to produce the information and documentation depends on the number of documents requested, the location of the documents, and whether the information must be created or is in existence at the time of the request.

So far during 2009, FHFA has had 25 on-site examinations in process at some point during the year. Fannie Mae produced the documents required by these examinations within the period of time specified by FHFA, generally 10 days.³ FHFA made additional requests for information as the examinations progressed, and Fannie Mae responded within specified time periods.

In response to routine filing requirements and requests from FHFA, Fannie Mae produces reports either on a regularly scheduled basis or in response to standard requests from FHFA. Fannie Mae has established processes in place to obtain necessary documentation and produce the reports. Because submission of these reports is scheduled or otherwise known in advance by Fannie Mae, the company is able to produce the reports or other information in accordance with the due dates. Once this information is archived, however, a request for this information would be treated as a special request, and production time would depend on the nature of the request.

Fannie Mae cannot anticipate the scope of special requests, which are generally for data not produced in the normal course of business. As discussed below, the time necessary to respond to a special request will depend on the amount and location of source documents.

Timing of Record Production

Fannie Mae frequently cannot control the production or delivery process associated with information requests from FHFA. For example:

(1) Depending upon the volume, type and dates of paper records stored in offsite storage, it may take several business days to fulfill a request from FHFA. The steps in this process include transmitting the request to the offsite storage vendor, shipping, delivery, unpacking of boxes, production and delivery to FHFA.

(2) Production of records stored in the form of data logs in structured systems will depend upon the request, the type of system and application that produces the logs, and the time necessary for extraction, production, and delivery of data to FHFA.

³ For example, one recent request for information in connection with an on-site examination was sent to the company on September 1 and requested that the information be supplied by September 22.

(3) Production of records archived on tape and retained with an offsite storage vendor require transmittal, shipping, delivery, loading of the tape on a server, search of the tape for specific records, and retrieval. This process may take several business days.

Past experience in providing documents to FHFA has shown that Fannie Mae has been able to respond to requests and produce documents in a timely manner, consistent with the nature and scope of the request. Moreover, the time periods set forth in the regulation are not consistent with typical FHFA requests. Accordingly, Fannie Mae requests that FHFA eliminate subsection (b) of section 1235.6. The regulation would then provide, consistent with FHFA's existing practice, that records would be made available in a reasonable period of time.

Transitory Documents

Fannie Mae creates or acquires a large volume of documents in the course of its business. Many such documents, referred to as transitory documents, are maintained for brief periods and used for limited purposes. Examples of transitory documents include duplicate copies of records that are made only for convenience, to-do lists, unsolicited information or advertisements received from a product vendor, obsolete blank forms, newsletters and periodicals, and other documents of minimal or no value to the company. Fannie Mae requests that FHFA clarify that, unless subject to a record hold, transitory documents are not subject to the same restrictions as records, and need not be subject to a record retention schedule.

Establishment and Evaluation of Program

The Proposed Rule retains language requiring Fannie Mae to provide a copy of the record retention program "within 120 days of the effective date of this part, and annually thereafter, and whenever a significant revision to the program has been made." Fannie Mae submitted its record retention program initially to FHFA on February 23, 2007. Fannie Mae also provides periodic program updates (2 to 3 times each year) to FHFA, most recently on July 29, 2009. Fannie Mae will also provide FHFA with the required three year program overview on or about October, 26, 2009. Fannie Mae does not anticipate that it will need to make significant revisions to its record retention program as a result of the Proposed Rule. Fannie Mae requests that FHFA clarify that the enterprises need not submit another copy of the record retention program within 120 days of the effective date of the final rule, and that the enterprises may maintain their existing schedules for submitting the record retention program to FHFA.

Conclusion

Fannie Mae continues to aggressively implement and support a robust records management and records hold program that has allowed Fannie Mae to respond to requests from FHFA in a timely manner. Resources required to implement the timeframes set forth in the Proposed Rule could be significant, and perhaps better utilized in addressing the needs of the housing market. Fannie Mae requests, therefore, that

FHFA continue, to the extent possible, to implement the record retention regulation as it was originally created by OFHEO in 2006.

* * *

Thank you for allowing us to present these views. If you have questions regarding the matters addressed herein, please feel free to contact the undersigned at 202/752-6528.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julie', followed by a horizontal line.

Julie Katzman
Vice President and
Deputy General Counsel