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July 22, 2010

*Via Electronic Submission*

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

Attention: Comments – RIN 2590-AA27 (Duty to Serve Underserved Markets)

Dear Mr. Pollard:

The Federal Home Loan Mortgage Corporation (Freddie Mac) is pleased to submit our comments to the Federal Housing Finance Agency (FHFA) regarding its notice of proposed rulemaking and request for comments regarding the duty to serve underserved markets. We commend FHFA for its thoughtful consideration of the issues relating to the implementation of this statutory duty. We look forward to working toward our shared objective of supporting affordable and sustainable homeownership and rental opportunities across the country.

Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rob", is written over a light blue horizontal line.

Robert E. Bostrom  
Executive Vice President, General Counsel and  
Corporate Secretary

Enclosure



**COMMENTS OF THE FEDERAL HOME LOAN MORTGAGE CORPORATION**

**ON**

**THE FEDERAL HOUSING FINANCE AGENCY'S  
NOTICE OF PROPOSED RULEMAKING AND REQUEST FOR COMMENTS ON  
THE DUTY TO SERVE UNDERSERVED MARKETS**

**JULY 22, 2010**

## OVERVIEW

The Federal Home Loan Mortgage Corporation (Freddie Mac) is pleased to submit these comments on the Federal Housing Finance Agency's (FHFA) notice of proposed rulemaking to establish a duty for Freddie Mac and Fannie Mae (collectively, the Enterprises) to serve underserved markets.<sup>1</sup> Freddie Mac embraces the new duty to serve and looks forward to serving the markets identified in a manner consistent with statutory direction and safety and soundness.

Consistent with the requirements of conservatorship, FHFA's approach to implementing the Enterprises' duty to serve underserved markets "is to limit the proposed rule to existing core business activities . . . and to require that they not engage in new lines of business as a result of the duty to serve proposed rule."<sup>2</sup> At the same time, FHFA states that the Enterprises while in conservatorship "are expected to continue to fulfill their core statutory purposes, which include their support for affordable housing."<sup>3</sup> We commend FHFA for its thorough and careful consideration of the numerous aspects of this rulemaking, including Freddie Mac's previous comments in response to FHFA's advance notice of proposed rulemaking.<sup>4</sup>

Freddie Mac's comments on the proposed rule are organized as follows:

**Section I** discusses Freddie Mac's views on transactions and activities that should be eligible under the statutorily-specified underserved markets, as well as on FHFA's proposed regulatory provisions governing eligibility.

**Section II** provides recommendations on FHFA's performance and evaluation process, focusing on the underserved markets plan, the assessment factors, and the Congressional intent behind the duty to serve statutory provisions.

**Section III** addresses the proposed enforcement and reporting requirements set forth in the proposed rule.

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<sup>1</sup> 75 Fed. Reg. 32099 (June 7, 2010).

<sup>2</sup> FHFA News Release, *FHFA Proposes Rule on Fannie Mae and Freddie Mac Requirements for Underserved Markets*, June 1, 2010. See also 75 Fed. Reg. 32100 (discussion of conservatorship status).

<sup>3</sup> *Id.*

<sup>4</sup> See Freddie Mac's Comments on FHFA's Advance Notice of Proposed Rulemaking and Request for Comment on The Duty to Serve Underserved Markets, September 18, 2009 (Freddie Mac ANPR Comments).

## I. ELIGIBLE ACTIVITIES

The proposed rule would establish activities, transactions and programs eligible for consideration under the specified underserved markets. Our comments on each market and the general eligibility provisions are set forth below.

### Manufactured Housing

Congress designated manufactured housing as an underserved market subject to the Enterprises' duty to serve. Manufactured housing is an important source of affordable housing for very low-, low- and moderate-income families.<sup>5</sup>

The statute provides that in determining compliance under the duty to serve, FHFA "may consider loans secured by both real and personal property."<sup>6</sup> FHFA's proposed rule provides that personal property manufactured home loans (or "chattel" loans) are not eligible for consideration under the duty to serve. As FHFA observes in the preamble, chattel loans on manufactured homes are not considered towards the duty to serve "as these loans are inconsistent with Enterprise conservatorship and would require substantial new efforts by the Enterprises to ensure safe and sound operations and sustainable homeownership for families."<sup>7</sup> FHFA further observed: "The Enterprises have minimal experience with chattel financing, and the high level of defaults related to such financing creates significant credit and operational risks."<sup>8</sup> Freddie Mac supports FHFA's reasoning with regard to personal property loans.

Freddie Mac also supports FHFA's determination that mortgages with mandatory arbitration clauses would not be eligible for consideration under the duty to serve the manufactured housing market. This requirement is consistent with Freddie Mac's Single-Family Seller/Servicer Guide that states that Freddie Mac will not purchase any mortgages containing mandatory arbitration clauses.<sup>9</sup>

Finally, as FHFA is aware, various states differ in their legal classification of manufactured homes, and questions or uncertainties could arise as to whether a "home is titled as real property"<sup>10</sup> in certain cases involving land-home loans. Freddie Mac seeks clarification regarding the scope of what FHFA proposes to be ineligible for consideration. Certain types of land-home loans meeting specified conditions are eligible for purchase under our

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<sup>5</sup> Freddie Mac has provided considerable support to the manufactured housing market through our mortgage purchase activities. See Freddie Mac ANPR Comments, p. 6-8.

<sup>6</sup> Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) § 1335(d)(3), 12 U.S.C. § 4565(d)(3), as amended by the Housing and Economic Recovery Act of 2008 (HERA).

<sup>7</sup> 75 Fed. Reg. 32103.

<sup>8</sup> 75 Fed. Reg. 32104.

<sup>9</sup> Freddie Mac Single-Family Seller/Servicer Guide, 22.34 .

<sup>10</sup> Prop. § 1282.32(b)(1), 75 Fed. Reg. 32113.

Seller/Service Guide, which we believe should be eligible under the duty to serve.<sup>11</sup> We would be pleased to discuss this matter further with FHFA.

### Affordable Housing Preservation

The proposed rule enumerates the housing programs eligible for consideration under the duty to serve for the affordable housing preservation market. Importantly, the Enterprises would not be required to assist every specified program in a particular year, “but could take a step-by-step, concentrated approach,” initially focusing on certain programs.<sup>12</sup> We strongly support this clarification.

While the language in the preamble closely mirrors the statutory language and recognizes that this duty is not limited to the housing projects under the specified programs delineated in the statute, the proposed rule appears to limit eligibility only to the housing projects under the specified programs, with the addition of the Neighborhood Stabilization Program.<sup>13</sup>

Thus, we believe the proposal has the effect of being more limiting and restrictive than the statute. The statute is clear that the list of eligible activities is *nonexclusive*. The Enterprises are to serve the affordable housing preservation market “including housing projects subsidized under [the statutorily enumerated programs.]”<sup>14</sup> We read the statutory provision to mean that additional activities and programs — whether another federal program or an activity unrelated to a federal, state or local program — can be eligible for duty to serve consideration.

FHFA’s decision to add the Neighborhood Stabilization Program, for example, is consistent with the statute. An Enterprise’s purchase of military housing bonds is an example of financing, unrelated to an enumerated program, that preserves affordable housing for military personnel and their families. Indeed, an Enterprise’s activities to preserve affordable housing that are unrelated to any federal, state or local program can provide benefits for affordable housing preservation and should be eligible for consideration.

We therefore recommend that other programs or activities than those enumerated should be eligible for consideration, so long as the activity or program “preserve[s] housing affordable to very low-, low-, and moderate-income families.”<sup>15</sup> Because the proposed rule clearly states that FHFA may determine whether and how any transaction or activity will be considered for

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<sup>11</sup> Freddie Mac Single-Family Seller/Service Guide, H33.7.

<sup>12</sup> 75 Fed. Reg. 32106.

<sup>13</sup> 75 Fed. Reg. 32105-32106, 32113.

<sup>14</sup> FHEFSSA § 1335(a)(1)(B) (emphasis added), 12 U.S.C. § 4565(a)(1)(B), as amended by HERA. Congress’ use of the word “including” in FHEFSSA § 1335(a)(1)(B), 12 U.S.C. §4565(a)(1)(B), indicates that the subsidized housing programs enumerated in the statute were not intended to be exclusive. *See, e.g., Commissioner v. Morgan*, 293 U.S. 121, 125 n.21 (1934) (the term “includes” imports a general class, some of whose general instances are those specified in the statute).

<sup>15</sup> *Id.*

purposes of the duty to serve underserved markets,<sup>16</sup> the final rule should clarify that other programs and activities that are not specifically listed in proposed section 1282.33(b) are eligible for consideration, as determined by FHFA. Furthermore, we note that the proposed rule creates a mechanism for FHFA to review how the Enterprises plan to help preserve affordable housing through the approval process for the underserved markets plan.

Accordingly, Freddie Mac proposes the following language:

**“§ 1282.33 Affordable housing preservation market.**

(a) *Duty in general.* 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. The Enterprise’s activities under this section shall serve such families in the year for which the Enterprise is evaluated and rated.

(b) *Eligible Enterprise Activities.* Enterprise activities that support the preservation of affordable housing shall be eligible for consideration under the affordable housing preservation market, including, but not limited to, activities relating to the following: . . . .”

In addition, FHFA has requested comment as to whether the list of mortgage insurance programs in the affordable housing preservation market should include the section 221(d)(3) program as well as the section 221(d)(4) program. We believe that the section 221(d)(3) program for nonprofit sponsors should be considered under the duty to serve, in addition to the section 221(d)(4) program.

Freddie Mac also seeks clarification regarding the section 221(d)(3), 221(d)(4) and 236 mortgage insurance programs. We believe that the following purchase activities are eligible activities for purposes of satisfying the duty to serve this underserved market:

- purchasing mortgages insured under those programs, and
- purchasing conventional affordability-preserving mortgages on properties that were previously financed with mortgages insured under those programs.

We believe this approach best enhances the Enterprises’ efforts to facilitate a secondary market to preserve affordable housing in this segment of the residential mortgage market.

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<sup>16</sup> See Prop. § 1282.37(c), 75 Fed. Reg. 32115.

## Rural Markets

The proposed rule would define “rural area” consistent with the definition from the Housing Act of 1949, as implemented by the U.S. Department of Agriculture (USDA).<sup>17</sup> FHFA acknowledged in its preamble the operational challenges presented by this definition: “it would be necessary for the Enterprises to automate the coding of a rural/urban designation based on information currently available only through the USDA web site. The USDA web site is designed for loan underwriters and originators with much smaller transaction volume, who must enter property addresses individually into the web site to determine which addresses are located in rural areas. The volume of the Enterprises’ transactions is much larger, and they will need the capability to automate the rural/urban designation for large numbers of properties.”<sup>18</sup>

While Freddie Mac does not have objections to the rural area definition in principle, FHFA’s proposal to rely on the USDA website, even if the USDA website could accommodate the requisite volumes, presents unacceptable operational risks. First, unless the USDA maintains accessible archives, this proposal would prohibit replication and verification of results once the USDA’s data have been updated. Second, if the USDA data are changed during a calendar year, Enterprise performance could change unexpectedly with successive reports. Finally, the Enterprises would be relying on a third-party website to process millions of records, so if the site should have technical difficulties during a critical period, the Enterprises may not be able to report to FHFA as required.

FHFA recognized “the operational concerns to FHFA and the Enterprises”<sup>19</sup> and suggested two interim approaches: One approach uses USDA Rural-Urban Commuting Area (RUCA) codes for all purchases, and the other proposes that the Enterprises use RUCA codes for loans purchased in bulk transactions and have “originators of loans purchased on a flow basis to manually enter the property addresses in USDA’s web site and provide the resulting classification data to the Enterprise.”<sup>20</sup>

For the first interim approach to avoid creating unnecessary operational risk, FHFA would need to provide an annual reference data file that identifies rural areas at the census tract level, and which enables loan classification that is reconcilable, reproducible, auditable and consistent across the Enterprises. While Freddie Mac supports the use of an interim RUCA code-based definition, we recommend that FHFA evaluate other methodologies, possibly employing a

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<sup>17</sup> See 42 U.S.C. § 1490. Under this definition, “rural area” means any open country or any town, village, city or place that is not part of or associated with an urban area, and that: (1) has a population not in excess of 2,500 inhabitants, or (2) has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or (3) has a population in excess of 10,000 but not in excess of 20,000 and (A) is not contained within a standard metropolitan statistical area, and (B) has a serious lack of mortgage credit for lower and moderate income families.

<sup>18</sup> 75 Fed. Reg. 32109.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

combination of census and USDA classifications to minimize potential discrepancies with the USDA's approach under the Housing Act of 1949. The objective of such an exercise would be to minimize changes in rural eligibility when transitioning from the interim definition to the final one. Also, FHFA should consider granting automatic rural eligibility to loans previously designated as rural by USDA and other federal and state government programs, but that may not otherwise be classified as such by the interim definition.

The proposed manual coding by originators of loans purchased on a flow basis, as specified in the second interim approach, presents a number of significant concerns. First, as soon as the USDA updates its website, the Enterprises and FHFA would no longer be able to verify, audit or conduct quality assessments on earlier data provided by the lenders for the millions of loans we purchase through flow. Second, customer and Enterprise operational impacts are considerable. Systems upgrades and the human resources necessary for this effort would be costly, and would introduce greater possibility for human error. Finally, the Enterprises would have no automated means to benchmark our past flow performance or that of the market to determine how well we are complying with our duty to serve.

In sum, with the millions of mortgages that the Enterprises purchase each year, it is absolutely essential that the definition of rural area allow for operational automation and verification. To address these concerns, the proposed rule should be modified to reflect that FHFA will provide the Enterprises with a reference data file identifying rural areas at the census tract level, much like the Underserved Areas file historically provided for the housing goals. Such a file would (1) ensure consistency across FHFA and the Enterprises, (2) enable the Enterprises to determine through existing delivery systems whether a property backing a mortgage falls within a rural area, and (3) enable FHFA and the Enterprises to review and verify at a later time that the property in question did or did not fall within a rural area at the time the activity or transaction took place.

### Eligible Transactions and Activities

We support FHFA's view that activities and transactions eligible under the affordable housing goals should be eligible for consideration under the duty to serve to the extent they relate to an underserved market.<sup>21</sup> Consistent with this view, we urge FHFA to consider our recommendations on the eligible transactions and activities set forth in Freddie Mac's comments on FHFA's proposed 2010-2011 affordable housing goals.<sup>22</sup> For example, we recommend the adoption of our recommendations on the eligibility of HFA bond credit enhancement transactions and multifamily subordinate mortgages.<sup>23</sup> The proposed provision that prohibits

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<sup>21</sup> Because duty to serve-related transactions encompass a broader scope of activities than those that are goals-eligible, the transactions and activities eligible under the duty to serve can and should be more expansive.

<sup>22</sup> See Freddie Mac's Comments on FHFA's Proposed Rule on the 2010-2011 Enterprise Affordable Housing Goals, RIN 2590-AA26, April 12, 2010, pp. 12-22.

<sup>23</sup> *Id.* at 16-17.

consideration of transactions or activities for which either Enterprise previously received duty to serve consideration within the prior five years presents significant concerns, as we identified in our housing goals comment letter; we urge FHFA to eliminate the inter-Enterprise aspect of the proposed rule. We also recommend that FHFA permit income estimation in a manner consistent with the housing goals, such as for owner-occupied units.

Finally, we support FHFA's authority to determine whether certain transactions or activities could be considered for purposes of the duty to serve underserved markets. We read that provision to mean that the Enterprises can petition FHFA for a determination. Freddie Mac seeks clarity on our interpretation and requests that FHFA establish a reasonable time limitation by which it would notify the Enterprise of its determinations.

## **II. PERFORMANCE EVALUATION AND COMPLIANCE**

### Underserved Markets Plan

Freddie Mac strongly supports FHFA's proposal to require an underserved markets plan against which the Enterprises would be evaluated and rated. The use of a plan mechanism avoids a one-size-fits-all approach, allowing each Enterprise to exercise its business judgment, assess business opportunities in light of overall market conditions, and leverage its strengths and existing capacities to serve each underserved market.

We offer several comments that we believe would further improve the evaluation and compliance framework with regard to the underserved markets plan.

First, the structure and content of the underserved markets plan should take into account the unique characteristics of each Enterprise. Historically, each Enterprise may have adopted different operating models and business strategies with respect to each of the underserved markets. Each Enterprise also has its own mix of sellers and sourcing relationships.

Second, we recommend that FHFA consider the "baselines" from which each Enterprise will operate to serve the three underserved markets, which we submit are important considerations in FHFA's evaluation of the underserved markets plans submitted, as well as its annual compliance determinations. In the context of the loan purchase assessment factor, FHFA has identified the importance of considering "the Enterprise's past performance on the volume of loans purchased in a particular underserved market relative to the volume of loans the Enterprise purchases in that underserved market in a given year."<sup>24</sup>

While we agree that a review of prior performance is appropriate, we recommend that FHFA refrain from applying the historical data in a mechanical fashion to impute current standards of

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<sup>24</sup> 75 Fed. Reg. 32111; Prop. § 1282.35(c)(4)(iii), 75 Fed. Reg. 32114.

performance. Any review regarding the sufficiency of an underserved markets plan (including an examination of past performance) must take into account recent fundamental shifts in the market, as well as general market volatility and uncertainty. These market dislocations also may inform appropriate methods of measuring performance, such as share of business, since the achievement of historical absolute purchase volume levels (or units financed) simply may not be achievable under current conditions nor prudent from a safety and soundness perspective.

Third, the underserved markets plan would be required to specify “[t]he volume of loans the Enterprise will purchase that serves the particular underserved market” and provide “market size estimations” that support “[d]escriptions of market opportunities . . . .”<sup>25</sup> We emphasize that market sizing in the context of statutory underserved markets is a highly imprecise, difficult exercise. Comprehensive data on these underserved markets are far less likely to be available. Moreover, whether certain segments of the underserved market should be included in the market size estimate present issues of “scope.” For example, we foresee considerable difficulty in sizing “the market” for affordable housing preservation — with the numerous programs identified in the proposed rule. These difficulties, in turn, present uncertainties regarding the “volume of loans that the Enterprise *will* purchase.”<sup>26</sup>

Accordingly, the final rule should modify section 1282.35(c)(4) in two respects: Subsection (i) should require a description of “The *approximate* volume of loans that the Enterprise *anticipates it will* purchase that serves the particular underserved market”; subsection (ii) should state “descriptions of market opportunities shall be supported by market size estimations, *if reasonably available.*” We also recommend that an Enterprise’s description of market opportunities may take into account its prior activities in the underserved market.

Fourth, to the extent that FHFA retains the two-year term for the underserved market plan, we ask that the final rule expressly provide that an Enterprise may amend and update the plan, including the benchmarks and objectives, on an annual basis. The benchmarks and objectives described for the second year will necessarily be more general and subject to change. With the uncertainty and volatility that characterize current mortgage markets, the ability to revisit the two-year plan near the end of the first year is critical. In addition to a formal annual update, Freddie Mac requests that the final rule permit the Enterprises to amend the plan during the course of the two-year period, subject to FHFA review.

The final rule also should clarify that the initial two year-term would be 2010-2011. Specifically, the Enterprises would file a plan for 2010 “as soon as practicable after publication of the final rule, and with the earliest feasible effective date.”<sup>27</sup> The 2011 component of the plan would be filed by or near October 1, 2010, depending on the timing of the final rule.

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<sup>25</sup> Prop. § 1282.35(c)(4)(i), (ii), 75 Fed. Reg. 32114.

<sup>26</sup> *Id.* (emphasis added).

<sup>27</sup> 75 Fed. Reg. 32111.

Finally, because the underserved markets plan would contain confidential and proprietary information, we anticipate requesting confidential treatment for such submissions to FHFA.

### Assessment Factors

The proposed rule would establish the following four assessment factors, consistent with statutory language: (1) loan product assessment factor; (2) outreach assessment factor; (3) loan purchase assessment factor; and (4) investments and grants assessment factor.

FHFA explains that because “[l]oan purchases are the core business of the Enterprises and result in a tangible and immediate benefit to the families targeted for assistance . . . the loan purchase assessment factor, along with the outreach assessment factor, would receive significant weight in FHFA’s evaluation.”<sup>28</sup> The loan product assessment factor would appear to receive less weight, given that it “would not include any requirement that the Enterprises enter new lines of business.”<sup>29</sup> Finally, “[b]ecause the Enterprises are in conservatorship and are obligated to pay dividends to the Treasury for preferred shares of Enterprise stock that Treasury holds, the investment and grants assessment factor would receive little to no weight.”<sup>30</sup>

Freddie Mac generally supports FHFA’s proposed weighting of the assessment factors during this period of conservatorship. We urge FHFA to engage in ongoing discussions with the Enterprises on how the weightings might be calibrated during and following the conservatorship period, based on market and economic conditions, as well as the financial condition of the Enterprises.

Separately, we recommend that a transaction or activity should be eligible for consideration for multiple assessment factors within an underserved market. Proposed section 1282.37(e) provides that a “transaction or activity will only be considered under one assessment factor in a particular underserved market.”<sup>31</sup> Certain transactions or activities, however, could be relevant to more than one assessment factor. In order to increase loan purchases, the Enterprises will have to reach out to existing customers and potentially new customers. In fact, outreach will be core to many Enterprise initiatives in support of meeting the duty to serve. Under the “one assessment factor” rule, when a product initiative is paired with a customer outreach initiative to achieve volumes, an Enterprise will have to determine in which of the assessment factors to assign “credit” and then partner with customers to track loans as they proceed through the product-outreach-volume pipeline to preclude “double credit.” After conducting the outreach, it also would be difficult to attribute specific loans to outreach activities and exclude them from the volume totals without requiring our customers and outreach partners to flag the loans — a process that would be both extremely burdensome and highly imprecise.

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<sup>28</sup> *Id.*

<sup>29</sup> 75 Fed. Reg. 32111-12.

<sup>30</sup> 75 Fed. Reg. 32112.

<sup>31</sup> Prop. § 1282.37(e), 75 Fed. Reg. 32115.

We therefore believe that as long as the Enterprises are clear in describing their efforts in the underserved markets plan and are transparent in the exercise of their actions to meet their respective plan objectives and benchmarks, a transaction or activity should be considered for each assessment factor, for which it qualifies, in a particular underserved market. Given the qualitative nature of the duty to serve evaluation process, we see no reason why the final rule should artificially and mechanically limit applicability of a transaction or activity to a single assessment factor.

If the proposed language remains in the final rule, we seek clarification and guidance on how to treat situations in which more than one assessment factor is implicated as a result of an Enterprise's transaction or activity in support of the duty to serve underserved markets.

### Fulfilling Congressional Intent: The Focus on Underserved Markets

Congress enacted the duty to serve provisions “[t]o increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets . . . .”<sup>32</sup> The heart of this statutory requirement, therefore, is the Enterprises' duty to serve the three underserved markets, which inherently involve very low-, low-, and moderate-income families. The targeted beneficiaries of the statutory duty, through the support of the underserved markets, are very low-, low-, and moderate-income families as a broad category of borrowers and renters.

The proposed rule, in contrast, appears to reach beyond the scope of the statutory duty by requiring that the Enterprises' activities and transactions serve “each” of the three income groups. The proposed rule segments this category into three distinct income groups and could be construed to require the Enterprises to engage in transactions and activities that separately target each.<sup>33</sup>

We believe that the proposed segmentation of income groups is misaligned with the intent of the duty to serve statutory provisions. The intent of the statutory duty — distinct from the affordable housing goals — is to focus the Enterprises on qualitative service to historically underserved markets, which markets have an overwhelmingly very low-, low-, and moderate-income concentration. The duty to serve targets all of these income groups within the underserved markets themselves, rather than separate and discrete income groups within each market. By contrast, the approach in the proposed rule could, in effect, establish something akin to a separate housing goals regime. Rather than establish another *de facto* housing goals regime on top of the goals that already exist, we urge FHFA to focus on encouraging the Enterprises to align their efforts to serve these broad markets that, by definition, support very

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<sup>32</sup> FHEFSSA § 1335(a)(1), 12 U.S.C. § 4565(a)(1), as amended by HERA.

<sup>33</sup> See, e.g., 75 Fed. Reg. 32110 (references to “each income group”); Prop. §§ 1282.35(c)(2)(iii), 1282.35(c)(3)(ii), 1282.35(c)(4)(iv), 1282.35(f)(6) (at 75 Fed. Reg. 32114).

low-, low-, and moderate-income families. Indeed, planning (and drafting an underserved markets plan) at the level of granularity envisioned by the proposed rule would simply be imprecise and infeasible.<sup>34</sup>

Accordingly, while Freddie Mac does not object to FHFA's policy interest in collecting Enterprise data with regard to the segmented income groups in the context of loan purchases, FHFA's evaluation process and the regulatory provisions governing the underserved markets plan should refrain from segmenting "each income group." References to the segmented groups in the proposed rule should be replaced with the statutory language "very low-, low-, and moderate-income families" or "such families" where "each income group" (or similar language) is referenced, such as in the following sections: §§ 1282.32(a), 1282.33(a), 1282.34, 1282.35(c)(2)(iii), 1282.35(c)(3)(ii), 1282.35(c)(4)(iv), 1282.35(f)(6).

### III. REPORTING AND ENFORCEMENT

Under the proposed rule, the Enterprises would be required to submit quarterly reports to FHFA on its transactions and activities undertaken pursuant to their respective underserved markets plans, including detailed information on the Enterprise's progress toward meeting the plan's benchmarks and objectives.

While we fully support the need for periodic reporting, we suggest that semi-annual formal reporting on our duty to serve progress is more appropriate. Coupled with the existing quarterly reporting requirement under the affordable housing goals, quarterly reporting under the duty to serve would pose significant additional burdens on the company and its resources. Moreover, the qualitative nature of duty to serve performance reporting will require additional staff resources beyond the data-driven processes that govern housing goals-reporting.

With regard to the annual report, Freddie Mac urges FHFA to establish a staggered deadline schedule relative to the Annual Housing Activities Report (AHAR). For example, the duty to serve annual report could be due 30 days following the submission of the AHAR (which will be due 60 or 75 days following the end of each calendar year). A staggered schedule will allow the Enterprises to strengthen the controls and processes that govern both regulatory submissions and efficiently allocate resources between them.

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<sup>34</sup> We note that in the affordable housing goals provisions of FHEFSSA, Congress was careful to delineate separate requirements — where it deemed it appropriate — for particular income groups. *See* FHEFSSA §1332(a)(1)(A)-(C) (separate goal requirements for low-income families, families that reside in low income areas and very low income families for single family purchase money mortgages); § 1332(a)(2) (separate goal for refinance mortgages on owner-occupied single-family housing for low-income families); § 1333(a)(1) and (a)(2) (separate multifamily special affordable housing goal requirements for units affordable to low-income and very-low income families). In the duty-to-serve context, by contrast, Congress uniformly aggregated the three income groups for joint treatment in each market segment. *See* FHEFSSA §1335(a)(1)(A)-(C), 12 U.S.C. § 4565(a)(1)(A)-(C), as amended by HERA.

Finally, Freddie Mac observes that the enforcement provisions set forth in the proposed rule appear consistent with the statute. We note, however, that an inherent tension might exist between the regulations governing the duty to serve versus the affordable housing goals. For example, a tension exists between the regimes regarding moderate-income borrowers who qualify for the duty to serve but not for the low- and very-low income purchase and refinance housing goals. Separately, a more nuanced tension might exist between the rural duty to serve and the low-income areas purchase housing goal because of market conditions in rural areas. We therefore recommend that FHFA's compliance and potential feasibility determinations, as well as any potential enforcement actions, appropriately take such regulatory tensions into account. Freddie Mac would be pleased to engage in further discussions about these and any related topics.

## CONCLUSION

Freddie Mac appreciates the opportunity to comment on this important rulemaking. We look forward to engaging in efforts to serve the underserved markets identified by Congress in order to "increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing."<sup>35</sup>

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<sup>35</sup> FHEFSSA § 1335(a)(1), 12 U.S.C. § 4565(a)(1), as amended by HERA.