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October 11, 2001

Alfred M. Pollard, Esquire
General Counsel
Office of Federal Housing Enterprise Oversight
1700 G Street, NW, Fourth Floor
Washington, DC 20552

Re: RIN 2550-AA2 (Flood Insurance)

Dear Mr. Pollard:

Fannie Mae welcomes this opportunity to comment on the recent proposal of the Office of Federal Housing Enterprise Oversight ("OFHEO") to adopt various rules pursuant to the National Flood Insurance Reform Act ("NFIRA") (42 U.S.C. §§4001-4029) and the Federal Civil Penalty Inflation Adjustment Act of 1990, as amended ("IAA") (28 U.S.C. §2461 note). 66 FR 47563 (Sept. 12, 2001). Specifically, OFHEO proposes to amend its rules (1) to add language repeating various provisions of the NFIRA applicable to Fannie Mae and Freddie Mac ("the GSEs") which are codified at 42 U.S.C. §4012a; and (2) to modify, in accordance with the IAA, the maximum civil money penalty ("CMP") amounts applicable to the GSEs under 42 U.S.C. §4012a(f)(3) should they engage in a pattern or practice of purchasing loans in violation of procedures they have adopted under section 4012a(b)(3).

The proposal basically is advanced as a housekeeping measure and, on the whole, that is an appropriate characterization. There are, however, four aspects of the proposal on which we wish to comment.

Our first comment concerns proposed new 12 CFR §1773.2(a), which essentially would duplicate language applicable to the GSEs under 42 U.S.C. §4012a(b)(1) and (3). Both Fannie Mae and Freddie Mac have implemented procedures which are consistent with this statutory provision and which ensure that the loans they purchase are covered by required flood insurance. Neither the proposed regulatory language nor the relevant portion of the preamble suggests that the proposal, should it be adopted in final form, is intended to require the GSEs to readdress or revise the procedures they already have developed and implemented that comply with the statute. This is a point upon which clarity is essential, however, and, accordingly, we ask that OFHEO confirm this interpretation in connection with final rulemaking on this matter.

The second item we wish to comment on is the language in proposed new 12 CFR §1773.3(a) specifying that OFHEO may assess CMPs against a GSE that engages in a pattern or practice of purchasing loans in violation of procedures established pursuant to the National Flood Insurance

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Act ("NFIA") (42 U.S.C. §4002 *et seq.*). For the sake of clarity, we urge OFHEO to delete the reference to the NFIA and substitute one to 42 U.S.C. §4012a(b)(3), which is the specific statutory provision to which OFHEO's CMP authority in 42 U.S.C. §4012a(f)(3) by its terms relates. There are other provisions of the NFIA that loosely could be regarded as requiring the establishment of "procedures" (such as 42 U.S.C. §4104b(c), which requires the GSEs to use special hazard determination forms, and 42 U.S.C. §4106(a), which restricts GSE activities in communities not participating in the National Flood Insurance Program), but with respect to which OFHEO clearly has no CMP jurisdiction, given the narrow drafting both of 42 U.S.C. §4012a(f)(3) and the agency's own organic CMP authority under 12 U.S.C. §4636. Accordingly, in the interest of avoiding confusion, we ask that OFHEO make the clarifying change that we have noted.

Third, we note that proposed new 12 CFR §1773.1(a) states that the NFIRA designates OFHEO as the federal agency responsible for determining GSE compliance with the NFIRA and the NFIA. This is overly broad, as the only explicit compliance role Congress has assigned OFHEO with regard to those Acts is confined to 42 U.S.C. §4012a. *See also* 12 U.S.C. §4521. For the sake of clarity, we request that OFHEO redraft this part of the proposal more narrowly to reference only 42 U.S.C. §4012a.

Fourth, and finally, we note as well that proposed new 12 CFR §1773.1(a) makes the broad assertion that OFHEO is charged with enforcing the requirements of NFIRA with respect to the GSEs. OFHEO has no statutory basis for instituting enforcement action against a GSE under NFIRA beyond what is contained in 42 U.S.C. §4012a; its organic enforcement authority, found at 12 U.S.C. §4615 *et seq.*, contains no language relating to NFIRA violations, addressing instead capital issues and violations of the Federal Housing Enterprises Financial Safety and Soundness Act, (12 U.S.C. §4501 *et seq.*), Federal National Mortgage Association Charter Act (12 U.S.C. §1716 *et seq.*), and Federal Home Loan Mortgage Corporation Act (12 U.S.C. §1451 *et seq.*), and the rules and orders issued thereunder. Therefore, we respectfully ask that the assertion in question be deleted or restated more precisely.

Again, we appreciate this opportunity to provide the views of Fannie Mae on this proposal. Please do not hesitate to contact me (202-752-4850) (ann_kappler@fanniemae.com) or Randall McFarlane (202-752-8840) (randall_mcfarlane@fanniemae.com) if you have any questions.

Thank you for consideration of our views.

Sincerely,



Ann Kappler

Senior Vice President and General Counsel