July 16, 2004

Regulations Division
Office of the General Counsel
Room 10276
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Re: HUD's Proposed Housing Goals for Fannie Mae and Freddie Mac for the Years 2005-2008 – Docket No. FR-4790-P-01

Please accept these comments on behalf of the undersigned organizations regarding the rule proposed by the U.S. Department of Housing and Urban Development to establish Affordable Housing Goals for Fannie Mae and Freddie Mac (GSEs) for years 2005 through 2008.

As national housing, civil rights, community, and consumer organizations we have strong interest in promoting effective policies that help expand affordable home purchase and rental housing opportunities for low-income, minority, and other underserved households and communities. Fannie Mae and Freddie Mac are the nation's two largest housing finance companies and through their actions these GSEs have the ability to transform and expand markets. The GSEs have increased significantly their purchases of loans affordable to low income consumers and underserved communities since the goals requirements were put into place in the early 1990s. Yet much remains for the GSEs to accomplish. The current round of goals setting is an important means for encouraging the GSEs to continue this progress.

Goals should be set to challenge the GSEs to do more

HUD's proposed rule would ramp up each of the three affordable housing goals – the Low and Moderate Income Goal, the Underserved Areas Goal, and the Special Affordable Goal -- over the next four years. We support setting challenging goals for the GSEs.

Both GSEs have regularly met the annual housing goals set for them. The department's analysis, however, indicates that the GSEs' on average tend to be less successful in purchasing goals qualifying mortgages than their share of the overall market. The key premise of the proposed goal increases is that there are "ample opportunities" for the GSEs to do more to serve the affordable housing market. Important market segments where the analysis shows that the GSEs could step-up their performance include first-time homebuyers, especially minority first-time homebuyers, credit impaired borrowers, the rental housing market, including loan purchases for rehabilitation of these properties, and CRA loans.

We believe it is reasonable to expect that GSE mortgage purchases match and lead the primary lender market. Data for 2001 and 2002 (last two years for which data is available) shows that Fannie Mae in particular matched or led the market in many low and moderate income and minority loan categories. Freddie Mac also has shown improvements in many of these same market segments. The GSEs have both the responsibility and the capabilities to lead the affordable housing market. Setting stretch goals would encourage them to perform consistently up to this standard.

HUD is proposing goals that in the out years (2007 and 2008) are set at the very upper ends of the ranges of the department's own estimates of market size, whereas in past rulemakings the goal levels were set at the mid-point range. It behooves HUD, therefore, to ensure that these market estimates are based upon realistic assumptions, which are as accurate as reasonably possible.

We suggest that the final rule include mechanisms for making some adjustments to the established goal levels should unanticipated changes in market conditions warrant them. For example, the final rule should include a requirement for a two year review that allows HUD, in concert with input from the GSEs and the public, to review actual market conditions and GSE performance and make appropriate adjustments to the goals. Another approach would be for the final rule to build in features that would enable adjustments to be made to goals calculations should the estimates of market size prove to be significantly off the mark.

The ability to accurately predict future market size depends upon factors, such as the anticipated mix between home purchase and home refinance lending over the next four years. One concern is driven by the premise that refinance loans typically are not as "goals rich" as home purchase loans. Should home refinancings represent a significantly larger share of the mortgage market than HUD is projecting, it could have a negative effect on the GSEs' ability to achieve their goals. HUD could address this concern through the removal from both the numerator and denominator of any mortgage activity in excess of the percentage of home refinance loans used by HUD for estimating the size of this market (i.e., above 35%).

The volatility of the home refinance market also may create some uncertainties in estimating market size. To address this problem we are aware that some have recommended the elimination of single family home refinances from both the numerator and denominator used to measure GSE housing performance. We recognize the emphasis that home purchase and rental housing mortgage lending should be afforded. However, the continued expansion of the GSEs' presence into the subprime part of the home refinance market provides lower income homeowners with options they might not otherwise enjoy. Without these options, we fear that many of these homeowners may find themselves more vulnerable to being victimized by predatory lending practices that operate in the subprime market. A solution would be to establish subgoals that target this portion of the home refinance market. At a minimum, HUD should continue to count home refinances to low-income households and underserved communities for calculating goal performance.

Goals should be more tightly targeted

We believe that the housing goals would be more effective if they were more tightly targeted by income. The three broad goals established in 1992 continue to serve an important purpose, but they are not properly targeted to the neediest segments of the mortgage market. Improved income targeting would help to correct this problem. The Low and Moderate Income housing goal should be set at no more than 80 percent median area income (the goals presently count loans to families up to 100 percent of median area income). The Special Affordable Housing Goal should be limited to low-income families at no more than 60 percent of median area income.

Such changes would make the goals more consistent with the income targets for the Community Reinvestment Act requirements for lenders. It would also be consistent with HUD's home ownership initiatives and other federal housing and community development programs. The GSE legislation passed this spring by the Senate Banking Committee (S.1508) includes provisions intended to improve goals targeting along these lines.

Underserved Areas Goal should be better targeted

The income ceilings of at least one of the goals – the Underserved Areas Goal – can be achieved through this rulemaking. We are disappointed that improvements in targeting for this goal were not included in the proposed rulemaking.

The Underserved Areas Goal originally was established as a geographic target to encourage the GSEs to purchase mortgages in central cities, rural areas, and other underserved areas. This broadly defined goal reflected lawmakers concerns about the wholesale redlining of urban communities that was once prevalent. HUD eventually limited eligibility to census tracts defined by regulation as "underserved areas." Eligible tracts at present must have median incomes no higher than 90 percent in metropolitan areas (comparable income ceilings are also established for non-metro counties). Census tract eligibility is also permitted for tracts with median incomes up to 120 percent and which are at least 30 percent minority.

Experience has shown that these definitions still are too broad. The current income limits permit the GSEs to receive goals credit for the purchase of middle-income mortgages. HUD estimates that between 1999-2001 around 50 percent of the single-family owner-occupied mortgage purchases qualifying for this goal were comprised of above median income households (about 45 percent for metropolitan areas in 2002).

For this reason we favor adoption of tighter income ceilings, along the lines that were discussed by the department in the 2000 rule, but not acted upon in anticipation of the publication of 2000 census data. We recommend the eligibility definition be changed in the final rule that would limit goals qualifying mortgages for this goal to no more than 80 percent of median area income and no higher than 100 percent for tracts consisting of more than 50 percent minority.

Establishment of minority purchase requirements

Research indicates that higher cost subprime mortgages are disproportionately concentrated in minority areas and made to minority households. Many of these borrowers would qualify for cheaper loans but pay more than they should due to the lack of mainstream lending activity in these markets. An expanded GSE presence in minority markets would help to provide more affordable financing opportunities, which in turn, would lessen the incidence of price discrimination that presently exists in the primary market.

The data accompanying the proposed rule indicates that the GSEs have become much more active in 2001 and 2002 in serving minority home buyers. Yet there is continued room for growth, particularly in the first-time minority homebuyer market. The establishment by regulation of explicit minority subgoals within each of the three statutory goals and a new minority housing goal, which is likely to require a change to the statute, would provide a more direct means for encouraging the GSEs to close the remaining gap.

Underserved Areas Goal for Rural Areas – census tracts appropriate but home purchase subgoal should also be established

We support HUD's proposal to adopt a census tract definition for non-metropolitan underserved areas. Switching from the present county-based to a census tract-based definition should result in more precise targeting of underserved geographic segments of non-metropolitan communities.

We are disappointed that the proposal does not establish comparable home purchase subgoals for non-metropolitan areas. The lack of detailed HMDA data for these areas admittedly makes estimating market size more difficult for the department to do. However, we believe that data from private vendors and from other sources could still provide useful measures that could form the basis for meaningful non-metro home purchase subgoals.

Continue the Multifamily Subgoal but set it higher

We support continuation of a multifamily subgoal as part of the Special Affordable Housing Goal. However, the proposal continues to set the targets for this subgoal based upon one percent of the dollar amount of GSE purchases attributed to multifamily housing qualifying under the Special Affordable Housing Goal. In recent years the GSEs' activities have greatly exceeded these minimal levels. Thus, a subgoal set at 2.5 percent would seem reasonable and consistent with the overall approach that is being proposed.

Even if set appropriately the multifamily subgoal remains an imperfect mechanism for ensuring that the GSEs' devote sufficient attention to the credit needs of this important source of housing for lower income households. The establishment of multifamily subgoals within each of the three goals would be a more direct means for targeting more GSE activity to this important market segment.

Changes to the counting rules

The proposed rule asks for comment on whether it is desirable to employ supplemental statistical methods for estimating missing income data for single family and also for missing rent data for single family rental unit mortgage purchases. Part of the reason for the increase, the preamble notes, is the increase in GSE purchases in recent years of "low documentation" mortgage loans.

Reviewing the current counting rules for missing data to effect improvements seems appropriate in light of changing market conditions. However, we do not favor the adoption of new proxy rules that would have the effect of encouraging the GSEs to purchase more low or no documentation subprime loans. HUD should not award goals credit for the purchase of these types of loans.

New Bonus Point provisions should be established

The 2000 rule established the use of bonus points for both GSEs for certain market segments (i.e., single family rental and small multifamily rental housing mortgage purchases). HUD allowed this bonus point feature to lapse at the end of 2003 based upon its determination that they were no longer needed for these particular market segments. The use of bonus points can be a useful tool for promoting increases in GSE activity. We believe, however, that the use of this regulatory tool should be limited to particularly needy segments of affordable housing, but where the volume of purchases is likely under any circumstances to remain relatively low. For example, bonus points could help boost GSE efforts with regard to Section 8 preservation projects and mortgage purchases on Tribal lands.

HUD should adopt additional Anti-Predatory Lending safeguards.

The 2000 goals rule established anti-predatory lending standards that disallowed the GSEs from receiving goals credit for the purchase of loans with certain specified abusive features. These standards have reinforced GSE corporate policy in this area. Since this time, we are pleased to see that both GSEs have voluntarily adopted additional anti-predatory lending standards: prohibitions on the purchasing of loans with mandatory arbitration requirements and prepayment penalty limitations. The proposed rule was silent on this topic, but we encourage HUD to update its regulations in this area by incorporating these additional features.

Improve the GSE Public Use Data Base

Although not part of the proposed rulemaking, we urge HUD to improve the usefulness of the Public Use Data Base (PUDB). HUD's Semiannual Regulatory Agenda published this past December indicated that the department by Secretary Order would be releasing to the public certain additional loan-level GSE mortgage data. However, this data has yet to be released.

The PUDB is statutorily mandated and intended to fill what Congress termed at the time of passage of the 1992 GSE Act as an "information vacuum" concerning GSE performance data. Congressional signaled its intent that the PUDB established be used to complement data reported by the primary market lender through the HMDA. However, not all of the data that is complementary with HMDA is being released to the public even though it is currently being collected by HUD. As a result the PUDB is seldom used by the public.

Release of additional loan level data elements would increase the utility of the data by allowing more useful analysis of GSE performance at the local level. We urge HUD to move to make public these missing data elements.

Thank you for consideration of these comments.

Sincerely,

Stephen Brobeck, Executive Director
Consumer Federation of America

Ira Rheingold, Executive Director
National Association of Consumer Advocates

John Taylor, President and CEO
National Community Reinvestment Coalition

Roy O. Priest, President and CEO
National Congress for Community Economic Development

Sheila Crowley, President
National Low Income Housing Coalition