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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1251

RIN 2590-AA73

Housing Trust Fund

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final rule setting forth requirements related to allocations by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, the Enterprises) to the Housing Trust and Capital Magnet Funds created by the Housing and Economic Recovery Act of 2008. The rule implements a statutory prohibition against the Enterprises passing the cost of such allocations through to the originators of loans they purchase or securitize, and finalizes and continues an interim final rule FHFA issued on December 16, 2014.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, (202) 649-3050 (not a toll-free number), Federal Housing Finance Agency, Eighth Floor,

400 Seventh Street, SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as added by section 1131(b) of the Housing and Economic Recovery Act of 2008 (HERA), directs the Secretary of the Department of Housing and Urban Development to establish and manage a Housing Trust Fund (HTF) that is funded by amounts allocated by Fannie Mae and Freddie Mac and any other amounts appropriated, transferred, or credited to the HTF under any other provision of law. 12 U.S.C. 4568(a); see also id. at 4567(a). The purpose of the HTF is to provide grants to States “to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families” and “to increase homeownership for extremely low- and very low-income families.” Id. at 4568(a)(1).

Separately, section 1339 of the Safety and Soundness Act, as added by section 1131(b) of HERA, establishes the Capital Magnet Fund (CMF) within the U.S. Treasury as a special account within the Community Development Financial Institutions Fund. Id. at 4569(a). As with the HTF, the CMF is also funded by amounts allocated by Fannie Mae and Freddie Mac and any other amounts appropriated, transferred, or credited to it under any other provision of law. Id. at 4569(b); see also id. at 4567(a). Funds in the CMF are available to the Secretary of the Treasury to carry out a competitive grant program to attract private capital for, and increase investment in, “the development, preservation, rehabilitation, or purchase of affordable housing for primarily extremely

low-, very low-, and low-income families” and “economic development activities or community service facilities . . . which in conjunction with affordable housing activities implement a concerted strategy to stabilize or revitalize a low-income area or underserved rural area.” Id. at 4569(c).

Though the HTF is administered by the Secretary of HUD and the CMF is administered by the Secretary of the Treasury, Fannie Mae and Freddie Mac are supervised by FHFA. See generally id., at 4501 et seq. The Director of FHFA has general regulatory authority over each Enterprise and is responsible for ensuring that the purposes of the Safety and Soundness Act, the Enterprises’ charter acts, and any other applicable law are carried out. Id. at 4511(b). The duties of the Director include ensuring that the operations and activities of each Enterprise foster liquid, efficient, competitive and resilient national housing finance markets, including activities relating to mortgages on housing for low- and moderate-income families; that each Enterprise complies with the Safety and Soundness Act and any rules, regulations, orders and guidelines issued under it or the Enterprises’ charter acts; and that the activities of each Enterprise and the manner in which they are carried out are consistent with the public interest. Id. at 4513(a)(1)(B)(ii), (iii) and (v). The Director is authorized to issue any regulations, guidelines or orders necessary to carry out the duties of the Director under the Safety and Soundness Act or the Enterprise charter acts and to ensure that the purposes of such acts are accomplished. Id. at 4526.

The Enterprises’ allocation obligations to support the HTF and CMF (together, the Funds) and related requirements are set forth at section 1337 of the Safety and Soundness Act. Id. at 4567. That section addresses the amount the Enterprises are to set

aside and allocate to the Secretaries of HUD and the Treasury each fiscal year, based on the unpaid principal balance of their total new business purchases, which are the single- and multi-family residential mortgage loans or re-financings acquired by the Enterprises and held in portfolio or that support securities, notes or other obligations which the Enterprises guarantee. The section directs the Director to issue a regulation prohibiting an Enterprise from redirecting the costs of any required allocation to the originators of mortgages the Enterprise purchases or securitizes – the subject of this rulemaking – and addresses enforcement of Enterprise compliance with the section and any regulation, rule or order issued pursuant to it, and gives the Director authority to temporarily suspend allocations if the Director makes any finding among three set forth by statute. Id.

Section 1337 requires the Director to issue a regulation regarding the prohibition against passing costs of the allocations required under the section to originators and how compliance with the requirements of the regulation and statute is to be enforced. Pursuant to section 1337 and the Director’s general regulatory authority, the Director determined to issue an interim final rule with a request for comments to provide transparency on the prohibition and its implementation. The interim final rule itself is not a legislative rule but is procedural and thus would be excepted from the normal notice and comment requirements of the Administrative Procedures Act, 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3).

Though the substantive provisions of the interim final rule were established by statute and did not deviate from or add to the statutory requirements, the Director determined that issuing an interim final rule would support the implementation of the process of setting aside and allocating monies for the Funds and assure that the

prohibition on pass through of costs accompanies the planning and deployment of funds. Further, the interim final rule would support the development of regulatory oversight mechanisms to be put in place to assure compliance with the prohibition.

II. Comments Received on the Interim Final Rule

FHFA invited comments on all aspects of the interim final rule and received 74 comments during the comment period, which closed on January 15, 2015. Two trade associations, Opportunity Finance Network (OFN), a U.S.-based membership organization of community development financial institutions, and Independent Community Bankers of America (ICBA), a member organization of U.S. community banks, provided comments. The remainder of the comments were from private citizens.

Only one commenter addressed the subject of the interim final rule, stating that costs of allocations to the Funds should be passed through to the originators of mortgages the Enterprises purchase or securitize while the Enterprises are in conservatorships. Since the prohibition against redirection or pass-through is established by statute, FHFA has not made any change to the interim final rule in response to this comment.

Twenty-one comments did not address any issues related to the interim final rule but instead addressed aspects of Enterprise business or the conservatorships. Roughly half of the comments indicated support for Enterprise allocations to the Funds, and OFN supported allocations to the CMF in particular. Some commenters who were supportive nonetheless expressed concern about lifting the suspension on allocations while the Enterprises are in conservatorships, and others suggested that the lifting of the suspension is an indication that the Enterprises should no longer be in conservatorships. Other commenters, including ICBA, objected to Enterprise allocations to the Funds as long as

the Enterprises are in conservatorships.

In light of the comments received, FHFA is adopting the language of the interim final rule without change in this final rule.

Regulatory Impact

Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the rule's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act. FHFA certifies that the final rule is not likely to have a significant economic impact on a substantial number of small business entities because the rule is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1251

Administrative practice and procedure, Capital Magnet Fund, Government-sponsored enterprises, Housing Trust Fund, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, for the reasons stated in the Supplementary Information, under the authority of 12 U.S.C. 4567, the Federal Housing Finance Agency adopts as final the interim final rule published at 79 FR 74595, December 16, 2014, without change

Dated: March 18, 2015.

Melvin L. Watt,
Director, Federal Housing Finance Agency.

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