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MORTGAGE BANKERS ASSOCIATION

October 27, 2017

The Honorable Melvin L. Watt  
Director  
Federal Housing Finance Agency  
400 7<sup>th</sup> Street, SW  
Washington, DC 20219

cc: Office of Budget and Financial Management

**RE: FHFA Strategic Plan: Fiscal Years 2018-2022**

Dear Director Watt,

The Mortgage Bankers Association (MBA)<sup>1</sup> thanks the Federal Housing Finance Agency (FHFA; Agency) for the opportunity to comment on the Agency's draft strategic plan covering fiscal years 2018-2022.<sup>2</sup> The strategic plan provides a valuable opportunity for the public and interested stakeholders to understand FHFA's priorities and the actions it plans to take to further these priorities. We believe the development and release of a strategic plan, along with the opportunity for public comment, represents an example of good governance and adherence to the intent of the Government Performance and Results Act (GPRA)<sup>3</sup> and the GPRA Modernization Act of 2010.<sup>4</sup>

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's website: [www.mba.org](http://www.mba.org).

<sup>2</sup> FHFA, "FHFA Requests Input on FHFA's Draft Strategic Plan For Fiscal Years 2018-2022," September 27, 2017. Available at: <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Requests-Input-on-FHFA-Draft-Strategic-Plan-For-Fiscal-Years-2018-2022.aspx>.

<sup>3</sup> Public Law 103-62.

<sup>4</sup> Public Law 111-352.

MBA strongly supports the three strategic goals described in the draft strategic plan:

- 1) Ensure Safe and Sound Regulated Entities;
- 2) Ensure Liquidity, Stability, and Access in Housing Finance; and
- 3) Manage the Enterprises' Ongoing Conservatorships.

Each of these goals is critical to maintaining a housing finance system that facilitates broad access to credit for qualified borrowers while fostering competitive markets and protecting taxpayers. In order to best achieve these goals, MBA believes FHFA should heed the considerations described in greater detail below.

### **Separation of Primary Market Activities from Secondary Market Activities**

The secondary market liquidity provided by Fannie Mae and Freddie Mac (the Enterprises) is an essential contributor to the health of the housing finance system. As such, MBA supports FHFA's objective of "promot[ing] action by the Enterprises to maintain liquidity in the single-family secondary market for purchase money and refinance mortgages" and its expectation that "the Enterprises...maintain a multifamily liquidity presence in all geographic areas and through all market cycles."

It will be important, however, for FHFA to ensure that the Enterprises only undertake those activities that support secondary market liquidity—and that they not displace lenders and vendors operating in the primary single-family and multifamily finance markets. MBA has long recognized the importance of this "bright line" between the primary and secondary markets, and its continued application is particularly crucial given the rapid development and deployment of new mortgage-related technologies.

As these new technologies take hold, MBA recommends that FHFA develop a clear, well-defined assessment framework by which to evaluate any new Enterprise activities as to their implications for firms operating in the primary market. Further, MBA recommends that the Enterprises incorporate an open architecture framework for single-family initiatives to prevent calcification of a single approach or provider. The Enterprises should also clarify the parameters of any pilot programs they undertake, and upon adoption of new processes or systems, expedite their availability to all market participants that meet transparent performance or risk standards. Taken together, these steps should help mitigate the risk that the Enterprises' significant roles in the secondary market could distort the functioning or competitive balance of the primary market.

## **Enterprise Capital Needs**

Within the strategic plan, FHFA “continues to encourage Congress to complete the important work of housing finance reform” and reaffirms “the urgency of reform” and that “it is up to Congress to determine what future, if any, the Enterprises will have in the future housing finance system.” MBA fully agrees, and has consistently called upon Congress to develop comprehensive legislation that charts the path for reforms of the housing finance system.

FHFA also notes that the Enterprises’ capital buffers will be depleted on January 1, 2018 per the current terms of the Senior Preferred Stock Purchase Agreements (PSPAs). While some parties have called for FHFA to suspend the Enterprise dividend payments and thereby allow the Enterprises to gradually rebuild their capital buffers, MBA believes that such a decision would be unnecessary from a safety and soundness perspective and counterproductive to efforts to develop and implement much-needed comprehensive reforms.

The U.S. Treasury lines of credit available to the Enterprises currently stand at \$258 billion—a sum that eliminates any practical near-term risks to the solvency of either institution. Should Fannie Mae or Freddie Mac need to take a draw on these lines of credit, there would be no change in their existing books of business, day-to-day operations, or prospective ability to provide liquidity to mortgage markets. Further, a draw by either Enterprise would not constitute a “taxpayer bailout” under any reasonable definition of the phrase, as taxpayers would not be providing fresh funds to keep the Enterprise solvent—the true test of a “bailout.”

Any suspension of Enterprise dividend payments would also unnecessarily slow the growing momentum for comprehensive housing finance reform legislation. Despite FHFA’s much-welcomed statements that any gradual recapitalization of the Enterprises should not be interpreted as diminished commitment to the need for a legislative solution, MBA nonetheless fears that such action will be interpreted in this manner. Those who seek private profit at the expense of sound public policy will be emboldened, while mortgage market participants may lose confidence in the prospects of serious reform, creating further uncertainty around business planning. Given how difficult comprehensive reform has proven over the nine years of Enterprise conservatorship, we question the value of any decision that would risk setting the promising momentum of our current environment off course.

MBA therefore urges FHFA to stand behind the call for Congressional action contained in the strategic plan by resisting requests to suspend Enterprise dividend payments under the PSPAs.

## **Enterprise Credit Risk Transfers**

Over the past four years, the Enterprises have successfully developed and grown their single-family credit risk transfer (CRT) programs. Such programs have previously existed in the multifamily businesses of both Enterprises. These programs serve to reduce taxpayer exposure to mortgage credit risk by transferring this risk from the Enterprises to private investors, often in the form of debt securities that reference a pool of loans. While these transactions have been both innovative and effective, MBA believes that there are ample opportunities to extend the Enterprises' CRT programs to include greater use of front-end risk sharing.

Front-end risk sharing, which includes credit enhancement mechanisms such as deep mortgage insurance (MI) or lender recourse, holds the potential to diversify the Enterprises' CRT programs while better enabling lenders of all sizes to engage in these transactions. These options will also satisfy FHFA's commitment to "increase and deepen credit risk-sharing transactions by setting targets for multiple types of single-family mortgage credit risk-sharing transactions," as well as the Agency's requirement that the Enterprises "assess the economics and feasibility of additional types of risk transfer structures."

MBA urges FHFA and the Enterprises to use the lessons learned from the deep MI pilots initiated by the Enterprises in 2016 to create larger, ongoing front-end risk sharing programs. It is worth noting that lender utilization of such programs will likely be driven by the relative pricing of alternative executions, as well as by reductions in guarantee fees and loan level pricing adjustments that reflect the additional risk mitigation. It will therefore be critical that FHFA and the Enterprises provide increased deal- and program-level transparency to encourage lender utilization.

## **CSP/Single Security for the Single-Family Market**

MBA appreciates the ongoing work that FHFA and the Enterprises have taken to develop and operationalize the Common Securitization Platform (CSP) for the single-family market and the Single Security Initiative. It is encouraging that the strategic plan reiterates FHFA's long-running position that "building a new infrastructure for the securitization functions of the Enterprises remains an important priority" for the Agency.

The CSP will represent a dramatic upgrade from the outdated and inflexible single-family securitization infrastructures upon which the Enterprises have previously relied. MBA believes that the appropriate long-run role of the CSP is that of a market utility open to a wide variety of participants. It is therefore critical that, once the CSP is operationalized for the Enterprises, FHFA take the necessary steps to allow private issuers to utilize the platform. In the strategic plan, FHFA commits to "require that the

CSP be adaptable for use by additional market participants in the future,” and MBA recommends that FHFA begin this process as soon as possible.

With respect to the Single Security Initiative, FHFA has announced an expected implementation (Release 2) date within the second quarter of 2019. MBA urges FHFA and the Enterprises to take all reasonable steps to adhere to this timeline, and to provide the public with clear markers of progress as the Initiative advances towards completion.

### **Enterprise Multifamily Businesses**

MBA supports liquidity and stability in multifamily housing in all geographic areas and through all market cycles, given the importance of the multifamily rental market as a vital source of housing. As FHFA states, the Enterprises play a “critical ongoing role in the multifamily sector, particularly for affordable multifamily properties and underserved market segments.” Both Enterprises deliver financing in this market while sharing/transferring significant risk to third parties, thereby reducing taxpayer risk.

At the same time, diversification of capital sources in the multifamily real estate market is crucial to its strength. A range of financial institutions with varying business models compete vigorously in this market while dispersing risk throughout the system.

MBA appreciates FHFA's effort to balance these important objectives. FHFA should continue to do so, monitoring the size and the market share of various multifamily capital sources, while avoiding market disruption.

Consistent with FHFA's statements, the affordable and underserved segments of the market warrant a particular focus. Many communities face a shortage of affordable housing stock, including rental housing. The need for equity investments in this housing segment is acute.

Through FHFA's strategic plan and directives, we encourage the Enterprises to seek greater innovation in this area. Development and the substantial rehabilitation of affordable rental housing stock, whether supported by public subsidies or not, should be encouraged as mission-centric activities.

### **Limited English Proficiency (LEP) Borrowers**

The strategic plan notes that “...a healthy housing market requires liquidity and access across different borrower market segments” and “Even in liquid markets...some qualified borrowers...may face barriers and disruption in their access

to financing.” One such borrower segment that often encounters greater hurdles in the mortgage process is LEP borrowers.

As one step in a broader plan to attempt to better serve LEP borrowers, FHFA recently announced the addition of a borrower language preference question on the Uniform Residential Loan Application (URLA).<sup>5</sup> This question will be included on the redesigned URLA, which lenders may begin using in July 2019 and must begin using by February 2020.

MBA and other organizations have communicated a number of concerns regarding the inclusion of a language preference question at this time.<sup>6</sup> Among the most prominent of these concerns is that of heightened borrower expectations that may be created by such a question, absent the resources lenders need to provide borrowers with government-approved document translations and foreign language counseling services. To mitigate this concern, MBA has advocated for the development of centralized, accessible resources to aid LEP borrowers, potentially through the creation of a federal clearinghouse. FHFA should lead an interagency effort to gather government and Enterprise resources, standardize terminology and definitions, and make these resources widely available to consumers. This effort should include official translations of relevant information about the mortgage process, including legal documents and disclosures, as well as an easily accessible directory of HUD-approved counseling services that offer language translations.

An interagency process will also allow FHFA to work with those agencies that maintain rulemaking authority over lenders and servicers under many of the applicable laws, including the Equal Credit Opportunity Act (ECOA); the Fair Housing Act; unfair, deceptive, or abusive acts or practices under the Dodd-Frank Act; and unfair or deceptive acts or practices under the Federal Trade Commission Act. For lenders to be able to sustainably expand access to credit for LEP borrowers, the legal hurdles associated with a language preference question, such as the need for safe harbor provisions related to ECOA, must first be addressed.

FHFA should undertake these efforts as quickly as possible to ensure that resources are broadly available to consumers and appropriate safeguards are in place—for

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<sup>5</sup> FHFA, “Preferred Language Question to be Added to the Redesigned Uniform Residential Loan Application,” October 20, 2017. Available at: <https://www.fhfa.gov/Media/PublicAffairs/Pages/Preferred-Language-Question-to-be-Added-to-the-Redesigned-Uniform-Residential-Loan-Application.aspx>.

<sup>6</sup> For example, see joint letters sent by MBA and other associations to FHFA dated June 8, 2016, July 31, 2017, and August 29, 2017. Available at: <https://www.fhfa.gov/AboutUs/Contact/Pages/input-submissions.aspx>.

both borrowers and lenders—*prior to the February 2020 mandatory-use deadline for the redesigned URLA.*

### **Diversity and Inclusion**

The strategic plan notes that FHFA will “work to promote and ensure diversity and inclusion of minorities and women in the business and activities of the Agency and the regulated entities.” MBA strongly supports this objective. In particular, MBA urges FHFA to pursue efforts—with respect to both the Agency and the regulated entities—that lead to a diverse and inclusive workforce through all levels and across all functions of the organizations. Such efforts should be sustained and continually monitored to determine if and where additional resources may be needed.

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MBA appreciates FHFA's consideration of our comments regarding the Agency's draft strategic plan. We look forward to our continued work with FHFA, the Enterprises, and the Federal Home Loan Banks to further the goals contained within the strategic plan.

Should you have questions or wish to discuss these comments, please contact Dan Fichtler, Director of Housing Finance Policy, at (202) 557-2780 or [dfichtler@mba.org](mailto:dfichtler@mba.org).

Sincerely,



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Mortgage Bankers Association