



MORTGAGE BANKERS ASSOCIATION

March 22, 2021

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Mark Calabria
Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20219

Request for Meeting to Discuss Enterprise Product and Cash Window Limitations

Dear Secretary Yellen and Director Calabria:

The Mortgage Bankers Association (MBA),¹ which represents all elements of the real estate finance industry, has long been an engaged stakeholder in efforts to reform the operations and market conduct of Fannie Mae and Freddie Mac (the government-sponsored enterprises, or Enterprises). Our primary focus remains on reforms that improve market liquidity, the Enterprises' financial resilience, and the ability of consumers to obtain affordable, sustainable mortgage credit.

As such, MBA welcomed many of the amendments to the Senior Preferred Stock Purchase Agreements (PSPAs) announced by the U.S. Department of the Treasury (Treasury) and the Federal Housing Finance Agency (FHFA) in January 2021.² The enhanced clarity on the milestones necessary for the Enterprises to exit conservatorship, in particular, promotes stability in the mortgage market. This stands in contrast to the volatility that would have been generated by any effort to release the Enterprises from conservatorship before they are more fully capitalized, and before necessary policy reforms are put in place.

MBA also welcomed the codification of conservatorship directives that prohibit the Enterprises from varying the pricing or other terms of their loan acquisitions based on lender size, charter type, or volume of business. Equal access to the secondary market

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 330,000 people in virtually every community in the country. Headquartered in Washington, D.C., 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 1,700 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

² U.S. Department of the Treasury, "Treasury Department and FHFA Amend Terms of Preferred Stock Purchase Agreements for Fannie Mae and Freddie Mac," January 14, 2021. Available at: <https://home.treasury.gov/news/press-releases/sm1236>.

for all types of lenders has been a long-standing policy priority for MBA, as this construct promotes a “level playing field,” reduces concentration risk among Enterprise counterparties, and adheres more closely to the Enterprises’ statutory purposes.

Upon further analysis of the PSPA amendments, however, MBA is concerned that limits on certain features of the Enterprises’ businesses, as well as the manner in which these limits are implemented, could cause unnecessary disruptions in the housing finance system.

Product Limits

The revised PSPAs feature several provisions limiting Enterprise acquisitions of certain types of loans. One such provision requires the Enterprises to limit “acquisitions of Single-Family Mortgage Loans secured by either investment properties or second homes to not more than 7 percent of the Single-Family Mortgage Loans acquired...during the preceding 52-week period.”³

When the amendments to the PSPAs were announced, Treasury noted that these limits were “aligned with [the Enterprises’] current levels” of investment property and second home acquisitions.⁴ Market volumes in these segments in 2020, however, were lower than in prior years, and data from recent months suggest that heightened sales and refinance activity in these segments is driving an increase in Enterprise acquisitions of these loans. It is not clear that private market participants currently have the capacity or resources to absorb the entirety of the gap between the Enterprise limits and the volume needed to satisfy underlying demand.

Based on reports MBA has received from a broad cross-section of lenders, it does not appear that the Enterprises have developed clear details or timelines associated with their plans to ensure compliance with these limits. Lenders have reported, for example, different requirements communicated to them by Enterprise personnel regarding their per-lender limits, the dates by which they must be compliant, and the timeframe over which they are being measured.

This lack of clarity regarding lenders’ ability to deliver loans secured by investment properties or second homes already has generated negative market impacts and could cause further harm in the near future. Specific MBA concerns include:

³ Executed Letter Agreements for Fannie Mae and Freddie Mac. Available at: <https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Fannie-Mae.pdf> and <https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Freddie%20Mac.pdf>.

⁴ U.S. Department of the Treasury, “Treasury Department and FHFA Amend Terms of Preferred Stock Purchase Agreements for Fannie Mae and Freddie Mac,” January 14, 2021. Available at: <https://home.treasury.gov/news/press-releases/sm1236>.

- Reports that the Enterprises may be implementing limits on a per-lender basis rather than across their aggregate books of business, which represents an overly conservative method of achieving compliance;
- Disproportionate challenges for some (particularly smaller) lenders to meet lender-level requirements set by the Enterprises, due to their footprints in certain geographic markets or their lack of access to non-Enterprise outlets for these loans;
- Reports that the Enterprises are requiring some lenders to adjust loan deliveries as early as April, which would cause problems for lender pipelines because these loans are locked and lenders cannot reasonably alter their delivery mixes on such short notice; and
- Inconsistencies in the requirements being communicated to different lenders by the Enterprises, which raises concerns about equitable treatment of lenders of varying sizes, charters, or business models.

MBA believes that Treasury and FHFA guidance to the Enterprises allowing them to more gradually manage their aggregate books of business below the 7 percent limits would reduce these market pressures. Under a more flexible approach and timeline, the Enterprises could make necessary adjustments to their automated underwriting systems, which would alleviate concerns about existing loan pipelines and better protect against market disruptions. Gradual changes also would provide time for private capital alternatives to develop the operational capacity to serve these market segments.

Another relevant provision of the revised PSPAs prohibits the Enterprises from acquiring “a Single-Family Mortgage Loan if, following the acquisition, more than 3 percent of [loans] that result from refinancing...or 6 percent of [loans] that do not result from refinancing...in each case that have been acquired...during the preceding 52-week period” feature two or more of the following characteristics: a combined loan-to-value ratio at origination above 90 percent, a borrower debt-to-income ratio above 45 percent, or a credit score below 680.⁵

While lenders have not yet reported outreach from the Enterprises for purposes of satisfying these requirements, MBA is cognizant that similar implementation issues as those described above should be considered. Flexibility for the Enterprises to manage their compliance with these limits should help protect against unnecessary market frictions.

⁵ Executed Letter Agreements for Fannie Mae and Freddie Mac. Available at: <https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Fannie-Mae.pdf> and <https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Freddie%20Mac.pdf>.

Cash Window Limits

MBA also is concerned that a provision limiting the use of the Enterprises' "cash windows" by certain lenders could have unintended consequences for borrowers, lenders, investors, and the Enterprises. The revised PSPAs include a requirement that, beginning January 1, 2022, the Enterprises shall "not acquire for cash consideration from any single seller...during any period comprising four calendar quarters Single-Family Mortgage Loans with an unpaid principal balance in excess of \$1.5 billion."⁶

This requirement will force many lenders – perhaps several dozen – to curtail their use of the Enterprises' cash windows. These lenders will need to pursue alternative approaches to avoid breaching this threshold, including greater use of – or development of the capacity to engage in – mortgage-backed security (MBS) swaps, sales of loans to correspondent aggregators, or shifting of their business mix to other loan products.

Given the potentially significant impact of this policy, MBA is focused on several concerns and possible adverse market outcomes,⁷ including:

- An increase in Enterprise counterparty concentration risk if a greater volume of loan deliveries is channeled through a smaller number of institutions with the capacity to engage in MBS swaps;
- Increased costs for lenders that need to build the capacity to engage in MBS swaps;
- Resistance from the Enterprises when certain lenders seek to engage in MBS swaps;
- The removal of an important liquidity management tool for lenders that prefer to retain servicing with actual (rather than scheduled) remittances; and
- Greater difficulty for the Enterprises to align prepayment rates and securitization policies, with negative effects for the Uniform MBS market.

The cash window limitation also presents several questions for which market participants seek clarification, including:

- How was the \$1.5 billion threshold determined? Is there a reason the threshold is set at a level low enough to impact as many as several dozen lenders?

⁶ Ibid.

⁷ Several of these concerns were raised by Freddie Mac in its most recent investor reporting, including an increase in counterparty risk, a reduction in the ability to align prepayment profiles with Fannie Mae, and a reduction in aggregate loan purchases. See: Freddie Mac, "Form 10-K, for the Fiscal Year Ended December 31, 2020," February 11, 2021. Available at: <http://www.freddiemac.com/investors/financials/sec-filings.html>.

- For how long do Treasury and FHFA expect this limitation to remain in place? Is it a response to COVID-19 concerns that will be sunset after the effects of the pandemic have subsided?
- Do Treasury and FHFA expect this limitation to impact Enterprise business volume or financial performance? If so, what types of analysis have been conducted to estimate these effects?
- Given that the Enterprises have steered some lenders away from engaging in MBS swaps, will FHFA require the Enterprises to establish clear and objective standards for lenders that choose to transition to this execution?

Multifamily Mortgage Purchase Activity

The revised PSPAs limit the Enterprises' acquisition of multifamily mortgages to \$80 billion in any 52-week period, except as adjusted annually by reference to the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics (CPI). The revisions also specify that at least 50 percent of multifamily mortgage assets acquired in any calendar year be "mission-driven."⁸

We understand that the multifamily limits are based on a combination of a target market share for the Enterprises together with a projection of the size of the overall multifamily market. The CPI does not track with either measure. We are concerned, as a result, that over time the multifamily limits may stray from FHFA's and Treasury's assumptions and intentions as to the target market share.

We also are concerned that the lack of flexibility to adjust the PSPA multifamily limits, if necessary, could hinder the ability of the Enterprises to fulfill their housing missions of providing liquidity in multifamily markets under all market conditions. In the similar context of its conservatorship multifamily caps, FHFA recently recognized that it may be appropriate to adjust multifamily acquisition limits to address changes in market conditions.⁹

We believe that FHFA, Treasury, the Enterprises, multifamily markets, and renters would benefit from the issuance of guidance, revisions, or protocols to provide a path for adjusting PSPA multifamily limits, if necessary, in response to substantial changes in market conditions.

⁸ Executed Letter Agreements for Fannie Mae and Freddie Mac. Available at: <https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Fannie-Mae.pdf> and <https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Freddie%20Mac.pdf>.

⁹ See FHFA release, *FHFA Announces 2021 Multifamily Loan Purchase Caps for Fannie Mae and Freddie Mac* (Nov. 17, 2020) ("To ensure the Enterprises continue to provide sufficient liquidity and support in the multifamily mortgage market through the economic cycle, FHFA has been and will continue to monitor the coronavirus' impact on the multifamily mortgage market and will update the multifamily cap and mission-driven targets if adjustments are warranted."); Available at: <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-2021-MF-Loan-Purchase-Caps-for-Fannie-and-Freddie.aspx>.

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Given the importance of these issues and the necessary changes to internal operations that many lenders (and the Enterprises) will need to implement, we respectfully request a meeting with you or your designees to discuss the concerns and questions that we have presented. We would be pleased to make industry practitioners from our membership available for such a meeting.

Thank you in advance for your consideration of this request. For meeting arrangements, please contact Pete Mills, Senior Vice President of Residential Policy and Member Engagement, at (202) 557-2878 or pmills@mba.org.

Sincerely,



Robert D. Broeksmit, CMB
President and Chief Executive Officer
Mortgage Bankers Association