MBA®

MORTGAGE BANKERS ASSOCIATION

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Acting Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20219

Michael DeVito
Chief Executive Officer
Freddie Mac
8200 Jones Branch Drive
McLean, VA 22102

Hugh Frater
Chief Executive Officer
Fannie Mae
1100 15th Street, NW
Washington, DC 20005

**Re: MBA Response to Temporary Enterprise Condominium Requirements Related to Deferred Maintenance and Structural Integrity**

Dear Acting Director Thompson and Messrs. DeVito and Frater:

The Mortgage Bankers Association (MBA)[1] thanks the Federal Housing Finance Agency (FHFA), as well as Fannie Mae and Freddie Mac (the Enterprises), for your consideration of industry feedback on the temporary Enterprise requirements related to deferred maintenance, structural integrity, special assessments, reserves, and project eligibility waivers for condominium and cooperative projects.[2,3] MBA has received a significant volume of industry inquiries and concerns about the temporary requirements, and has distilled below the most constructive recommendations for FHFA and the Enterprises to consider as you review and revise these safety requirements.

MBA appreciates the need for close examination of policies regarding the structural integrity of condominium projects. MBA and its members are committed to identifying and following best practices and all applicable local, state, and federal requirements to

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 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 more than 2,100 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] Fannie Mae, "Lender Letter 2021-14: Temporary Requirements for Condo and Co-op Projects," October 13, 2021. Available at: https://singlefamily.fanniemae.com/media/29411/display.
Freddie Mac, "Bulletin 2021-38: Temporary Condominium and Cooperative Project Requirements and Topic 5600 Reorganization," December 15, 2021. Available at: https://my.sf.freddiemac.com/updates/guide/bulletin~2021-38#temporary_project_requirements.

[3] Throughout these comments, the use of the terms "condominium" or "condominium projects" will reference condominiums, cooperatives, and any other projects subject to the Enterprises' temporary requirements.

minimize the potential for another tragedy like the collapse of the Champlain Towers South in Surfside, Florida. MBA is concerned, however, that the Enterprises' temporary requirements have had an unintended chilling effect on condominium lending in many markets. MBA asks FHFA and the Enterprises to work with the industry to better calibrate the safety benefits that the standards provide with the negative impacts to the cost and availability of credit for consumers. While further revisions to these requirements are being analyzed and developed, MBA also asks that FHFA and the Enterprises pause the implementation and enforcement of the existing temporary requirements.

In the following sections, we present industry feedback on the temporary requirements and related information collection, suggest improvements to the implementation of this policy, and provide line item-level suggested revisions to the data collection forms.

**Industry Observations Regarding the Temporary Requirements**

Condominiums long have been an important avenue for affordable homeownership throughout the country. MBA is concerned, however, that the additional requirements imposed by the temporary guidelines will impede lending in the condominium market. Industry participants are reporting that these temporary requirements are reducing the availability of mortgage credit for many condominium projects – thereby eroding a vital avenue for first-time homeownership and further restricting the supply of affordable housing stock.

MBA has broad concerns that: 1) satisfaction of the temporary requirements and completion of the associated form addendum are adding costs to borrowers, 2) condominium associations and management companies are failing to fully complete the new addendum due to burdensome data collection points, and 3) responsibly governed condominium projects – many with existing units financed by Enterprise-backed loans – are being deemed ineligible or are in turn refusing to accept buyer contracts using Enterprise-backed loans.

Many condominium associations are increasing their fees for completion of the addenda to the Enterprises' condominium questionnaires. Associations and management companies often charge fees by the page for completion of such documents. The associations, additionally, will charge for any additional documentation they are required to provide to validate the requirements per the questionnaire, such as past meeting minutes or copies of reserve studies. These fees are most often passed on to the consumer, adding to the overall cost of their loan.

Lenders also are reporting frequent instances in which they receive incomplete condominium questionnaires for project approval. Many condominium associations and their management companies have stated that they will not complete the form in its entirety due to concerns regarding liability. Often these associations are being advised by their attorneys not to answer certain questions due to the sweeping nature of the questions or the need to attest to forward-looking statements. Some condominium associations, additionally, did not have adequate time to adjust their budgets, agree to the costs of reserve studies, or otherwise prepare for the implementation of the new requirements. These challenges have caused many associations and management companies to temporarily halt acceptance of purchase contracts associated with Enterprise-backed loans.

Lenders similarly are reporting that many responsibly governed condominium projects, often with units with existing Enterprise-backed mortgages, are becoming closed to opportunities for future Enterprise-backed lending. Some overly cautious associations are reporting maintenance that most lenders would consider routine – but which causes the project to be deemed ineligible. In these situations, associations are acting appropriately and prudently by recognizing problems and developing plans to fix them, yet they are penalized for doing so.

The new requirements also create additional rep-and-warrant and repurchase risk for lenders that could – and in limited cases is – leading lenders to pause offering Enterprise-backed condominium lending products. Due to insufficient guidance on the new requirements, there is a lack of consistency across lenders regarding what constitutes acceptable responses to the addendum questions. This dynamic creates tension and concern that if one lender approves a project as suitable, but another has a stricter standard, the first will be penalized for inadequate oversight despite lack of upfront clarity from the Enterprise guidance.

Lack of clarity for lenders, challenges obtaining proper documentation, and increased administrative costs to comply with the temporary requirements all threaten to constrain lending in the condominium market. MBA already is receiving reports that these significant procedural hurdles are delaying closings, causing loan officers to avoid condominium lending, and driving condominium project managers away from supporting Enterprise-backed lending. In a market characterized by low supply and diminishing affordable housing stock, the Enterprises' condominium project review policies should better mitigate the adverse impacts on cost and availability of condominium financing.

**Line-Item Feedback on Fannie Mae Form 1076 and Freddie Mac Form 476A**

To improve upon the temporary requirements while ensuring safety, soundness, structural integrity, and habitability of condominium projects, the Enterprises should, at a minimum, take into consideration industry feedback on the questions within the addendum and provide a revised form. As written, the addendum contains information collection that is repetitive, not relevant to the objectives of the collection, non-specific, and which unduly exposes condominium projects and their management to legal liability.

The following feedback corresponds to questions found within the Building Safety, Soundness, Structural Integrity, and Habitability section in Fannie Mae Form 1076 and Freddie Mac Form 476A.

- **Questions 1, 2**
  MBA suggests these questions should inquire solely about failed inspections within a specified time frame (*e.g.*, five years). It is important to specify failed inspections, as the information collection is only relevant if there were findings. The Enterprises could further tailor the question to apply only to findings for which the remedy requires residents to vacate the condominium project.
- **Question 3**
  FHFA should review whether information collected in questions 1 and 2 is encompassed in the information collected in question 3 and eliminate any redundancy.
- **Question 4**
  Lenders are concerned that incomplete knowledge of applicable state guidelines would lead to repurchase risk based on a missed guideline. It would be more appropriate to ask about documented violations.
- **Question 5**
  Forward-looking questions are inappropriate as condominium associations and management companies cannot reasonably certify whether issues will arise in the future.
- **Questions 6, 7, 8**
  These questions negate the benefit of lenders not being required to go through a full review (and full budget review) on every transaction. Most condominium associations and management companies charge additional fees for providing meeting minutes and budget documents. The increased costs are often passed on to the borrower. A more direct question would inquire as to what plans are in place to fund repairs of any deficiencies related to safety, soundness, structural integrity, or habitability.
- **Question 9**
  This question is only relevant for purposes of a full review. The question flags projects with diminished reserves, but other financing options are available to condominiums if the need arises for emergency repairs.
- **Questions 10, 11**
  Questions 10 and 11 should be combined to ask about current and planned special assessments.
- **Question 12**
  Lenders suggest the terminology in this question is problematic, as there needs to be a clear distinction between deferred maintenance as typically budgeted in the 10 percent budget item, and unscheduled repairs not covered in the reserve schedule. There should be a clear differentiation between planned deferred maintenance (typically covered by the reserve schedule) and unmet safety obligations. The question should ask whether deficiencies related to safety,

soundness, structural integrity, or habitability of the project's buildings exist, and if so, what has been planned to fund the necessary repairs.

While FHFA and the Enterprises are evaluating this feedback, MBA urges that implementation and enforcement of the temporary requirements be paused. FHFA and the Enterprises should undertake a careful re-assessment of the requirements, but while in the process of doing so, they should not allow the current market challenges to continue unabated. A suspension of these requirements until they are revised would serve this purpose and facilitate smooth market functioning.

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MBA once again thanks FHFA, Fannie Mae, and Freddie Mac for the opportunity to comment on the temporary condominium requirements. We appreciate the challenges of addressing the risks posed by the Champlain Towers collapse, but also are concerned about the impact of the Enterprises' response on the functioning of the condominium lending market. We believe the recommendations provided above will further strengthen the ability of FHFA and the Enterprises to ensure the safety, soundness, structural integrity, and habitability of condominium projects with Enterprise-backed loans. We look forward to continuing our partnership as we work towards practical solutions that promote and sustain condominium lending, a pillar of the affordable housing market.

Sincerely,

Pete Mills
Senior Vice President
Residential Policy and Strategic Industry Engagement
Mortgage Bankers Association