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MORTGAGE BANKERS ASSOCIATION

April 25, 2022

Ms. Sandra L. Thompson  
Acting Director  
Federal Housing Finance Agency  
400 7<sup>th</sup> Street, SW  
Washington, DC 20219

**RE: Re-Proposal to Enhance Eligibility Requirements for Enterprise Single-Family Seller/Servicers**

Dear Acting Director Thompson:

The Mortgage Bankers Association (MBA)<sup>1</sup> appreciates the opportunity to provide observations and recommendations on the Federal Housing Finance Agency (FHFA) re-proposal of updated eligibility requirements for seller/servicers of single-family loans backed by Fannie Mae and Freddie Mac (the Enterprises).<sup>2</sup>

MBA also appreciates FHFA pausing its efforts to update these requirements until the most severe impacts of the COVID-19 pandemic had passed, allowing servicers to focus their attention and resources on providing assistance to impacted borrowers.<sup>3</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 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 2,200 companies includes all elements of real estate finance: independent mortgage banks, commercial banks, mortgage brokers, 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](http://www.mba.org).

<sup>2</sup> Federal Housing Finance Agency, "Re-Proposal to Enhance Eligibility Requirements for Enterprise Single-Family Seller/Servicers," February 24, 2022. Available at: <https://www.fhfa.gov/Media/PublicAffairs/Documents/SE2-Proposal-FAQ.pdf>.

<sup>3</sup> Federal Housing Finance Agency, "FHFA to Re-Propose Updated Minimum Financial Eligibility Requirements for Fannie Mae and Freddie Mac Seller/Servicers," June 15, 2020. Available at: <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-to-Re-Propose-Updated-Minimum-Financial-Eligibility-Requirements-for-Fannie-Mae-and-Freddie-Mac-Seller-Servicers.aspx>. In comments at the MBA 2021 Annual Convention and Expo, FHFA Acting Director Thompson also noted that: "I know that many here are anxious about the timing of updated Enterprise nonbank seller-servicer standards. I can tell you that Servicer Eligibility 2.0 will not come before next year. Right now, we need Enterprise servicers to focus their full attention on helping distressed borrowers transition out of COVID forbearance into long-term, sustainable situations that keep them in their homes." See: <https://www.fhfa.gov/Media/PublicAffairs/Pages/Prepared-Remarks-of-Sandra-L-Thompson-Acting-Director-FHFA-at-the-2021-MBA-Annual-Convention-and-Expo.aspx>.

## ***Executive Summary***

As MBA noted in previous comments on servicer net worth, capital, and liquidity requirements, any regulatory or quasi-regulatory framework (such as the Enterprise eligibility requirements) must be tailored appropriately to the risks presented in the market.<sup>4</sup> MBA acknowledges the importance of ensuring resiliency among servicers of Enterprise-backed loans, and while the adjustments to net worth and capital requirements appear reasonable, there are critical refinements to the liquidity elements of the proposal that FHFA should address before adopting these requirements. The three most important of these refinements relate to:

- 1) the substantial increase in required (aggregate) liquidity for most servicers;
- 2) the problematic incentives created by the origination liquidity (to-be-announced (TBA) hedging) requirement; and
- 3) the lack of recognition of committed lines of credit as stable sources of liquidity.

The proposal features an increase in base liquidity requirements for servicers, as had been contemplated previously by FHFA, as well as by Ginnie Mae and state regulators, while also introducing new liquidity requirements based on the size of an institution's servicing portfolio and its TBA hedging position. While FHFA provides its rationale for each of these elements, their combination would result in a higher liquidity requirement by a factor of two to five times for many servicers.<sup>5</sup> This is a staggering increase in minimum liquidity. FHFA has not provided sufficient rationale as to why such a substantial increase in aggregate liquidity is needed across the sector.

A portion of this increase in required liquidity would come from the newly proposed liquidity requirement associated with TBA hedging positions. MBA recognizes the need to ensure the industry is equipped to address margin calls associated with adverse market movements on hedge positions. The origination liquidity requirement, however, is flawed in its construction and is likely to discourage servicers from employing prudent hedging techniques – thereby leading to greater risk. The calibration of the origination liquidity requirement at 200 basis points plays a large role in the steep increase in aggregate liquidity requirements, as well.

This steep increase is made more problematic by the complete exclusion of any available, committed lines of credit – such as those supported by servicing advance receivables, as had been permitted previously, and those supported by mortgage servicing rights (MSRs)

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<sup>4</sup> MBA, "Industry Views on Updated Eligibility Requirements for Enterprise Single-Family Seller/Servicers," April 30, 2020. Available at: <https://www.mba.org/industry-resources/resource/mba-letter-to-fhfa-on-servicer-requirements2>.

<sup>5</sup> FHFA notes that the proposed liquidity buffer would be calculated in excess of the minimum (base) liquidity requirement. As a practical matter, however, the buffer amount would be treated as a component of a servicer's minimum requirement – both by the servicer and by its warehouse lenders, investors, and other counterparties – even if the servicer received permission to draw on the buffer.

– from the set of assets that can satisfy the liquidity requirements. These lines are a well-accepted liquidity risk management tool, and their lack of recognition reduces incentives for servicers to pay for committed (as opposed to uncommitted) lines. Their exclusion also compounds the problematic nature of the heightened liquidity requirements by limiting the types of assets that must be held to meet these requirements.

To address these three issues, FHFA should:

- 1) adjust the levels of the base liquidity requirements and the liquidity buffer;
- 2) delay implementation of the origination liquidity requirement until further analysis can be completed; and
- 3) provide recognition of committed lines of credit.

Additional MBA recommendations related to the large servicer requirements would better clarify and target the use of third-party ratings and ensure alignment with Ginnie Mae on capital and liquidity planning. More broadly, MBA reiterates the importance of aligned net worth, capital, and liquidity requirements across FHFA and the Enterprises, Ginnie Mae, and state regulators. Misalignment of these requirements only adds complexity and increases compliance costs without improving risk management. MBA is encouraged by recent efforts to promote harmonized requirements across the relevant agencies and regulators.

MBA also is encouraged by some of the changes FHFA has put forth relative to the proposal issued in January 2020.<sup>6</sup> In comments in response to that proposal, MBA voiced concerns with the procyclical non-performing loan (NPL) threshold and surcharge, as well as the lack of distinction between the liquidity risks associated with actual servicing remittances and scheduled servicing remittances.<sup>7</sup> In later comments to Ginnie Mae, MBA detailed the potential negative impact of a risk-based capital ratio requirement that featured punitive treatment of MSR.<sup>8</sup> MBA is pleased that the current FHFA proposal removes the procyclical NPL threshold and surcharge, distinguishes between actual and scheduled servicing remittances, and does not include a risk-based capital ratio requirement. These features all encourage more prudent risk management on the part of servicers and others in the mortgage finance ecosystem.

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<sup>6</sup> FHFA, “Updated Eligibility Requirements for Enterprise Single-Family Seller/Servicers,” January 31, 2020. Available at: <https://www.fhfa.gov/Media/PublicAffairs/Documents/Servicer-Eligibility-FAQs-1302020.pdf>.

<sup>7</sup> MBA, “Industry Views on Updated Eligibility Requirements for Enterprise Single-Family Seller/Servicers,” April 30, 2020. Available at: <https://www.mba.org/industry-resources/resource/mba-letter-to-fhfa-on-servicer-requirements2>.

<sup>8</sup> MBA, “Re: Request for Input on Eligibility Requirements for Single-Family MBS Issuers,” August 9, 2021. Available at: <https://www.mba.org/industry-resources/resource/mba-letter-to-ginnie-mae-on-issues-eligibility-requirements>.

Given the significant nature of some of the proposed changes, MBA recommends that FHFA extend the implementation period to approximately 18 months – rather than six months, as is contemplated in the proposal. Servicers that need to adjust their net worth, capital, and liquidity positions should be provided with a more reasonable period in which to do so, and an 18-month timeframe should allow for more careful financial planning and reduce the market impact of many servicers undertaking similar actions to increase their liquidity at the same time.

As was noted earlier, MBA strongly supports efforts to enhance resiliency in the mortgage market, and therefore continues to recommend several actions that FHFA or other agencies could take to achieve greater resiliency. These actions address issues such as Federal Home Loan Bank (FHLB) membership, servicing of Federal Housing Administration (FHA)-insured loans, Ginnie Mae platform capabilities, Ginnie Mae advancing obligations, the Ginnie Mae Pass-Through Assistance Program (PTAP), treatment of MSR in the Basel framework, and margining practices associated with agency mortgage-backed securities (MBS).

<b>Summary of MBA Recommendations</b>	
Base Liquidity	Adjust to: <ul style="list-style-type: none"> <li>• Actual Enterprise servicing: 2.5 basis points</li> <li>• Scheduled Enterprise servicing: 5 basis points</li> <li>• Ginnie Mae servicing: 8 basis points</li> </ul>
Origination Liquidity (TBA Hedging)	Do not implement at this time Analyze potential adjustments to this concept, including: <ul style="list-style-type: none"> <li>• Ensuring netting arrangements are reflected</li> <li>• Lowering the 200-basis-point surcharge</li> <li>• Allowing margin payments to satisfy this requirement rather than necessitating 200 basis points of liquidity above margin already paid</li> </ul>
Liquidity Buffer	Reduce buffer levels Require notification rather than permission to draw down buffer Require remediation plan only after servicer falls below buffer for two consecutive quarters

Eligible Assets for Liquidity	<p>Provide partial recognition of committed lines of credit by:</p> <ul style="list-style-type: none"> <li>• Allowing them to account for no more than a given percentage of a servicer's aggregate liquid assets;</li> <li>• Allowing them to account for only some of the components of a servicer's minimum required liquidity; or</li> <li>• Instituting a haircut on them for purposes of calculating liquid assets</li> </ul>
Third-Party Ratings	Do not require a primary servicer rating for institutions that do not have servicing operations
	Allow servicers to apply for heightened net worth, capital, and liquidity levels to serve as a substitute for third-party credit ratings
Capital/Liquidity Planning	Align any capital/liquidity planning requirements with those already in place at Ginnie Mae
Large Servicer Requirements	Provide sufficient time for servicers that cross the large servicer threshold to come into compliance with any enhanced requirements
Capital	Codify commonly-used waivers or exclusions to gross assets
Structural Reforms to Enhance Resiliency	<p>FHFA, as well as other federal and state agencies, should take actions to enhance resiliency throughout the market:</p> <ul style="list-style-type: none"> <li>• FHLB membership</li> <li>• FHA servicing policies</li> <li>• Ginnie Mae platform capabilities</li> <li>• Ginnie Mae advancing obligations</li> <li>• Ginnie Mae PTAP</li> <li>• Treatment of MSRs in the Basel framework</li> <li>• Agency MBS margining practices</li> </ul>
Agency Coordination	Continue efforts to align requirements across FHFA and the Enterprises, Ginnie Mae, and state regulators to the greatest extent possible
Implementation Timeline	Provide an 18-month implementation period for all new requirements

### ***Analysis of MBFRF Data***

To better inform MBA's review of the FHFA proposal, MBA staff analyzed historical data submitted by servicers through the Mortgage Bankers' Financial Reporting Form (MBFRF). This analysis examined industry compliance with the proposed requirements had they been in place in prior reporting periods. MBA analyzed data from 2021 (a period of strong industry profitability) and 2018 (a more challenging environment for industry profitability). FHFA and the Enterprises should conduct similar analysis over several time periods to understand the impact of the proposed requirements over time – not just during the high point in the credit cycle. MBA reviewed data from 297 servicers at year-end 2018 and 334 servicers at year-end 2021. Because current MBFRF data does not include TBA hedge positions or information on the use of actual and scheduled servicing remittances, the full impact of the proposed requirements could not be determined. The absence of the TBA hedging data means the results likely are too generous with respect to compliance with minimum liquidity requirements.

The most notable results were observed with the imposition of higher base liquidity requirements and the liquidity buffer for larger servicers under 2018 market conditions. While all larger servicers were compliant with the Enterprise requirements in place in 2018, between 29 percent and 53 percent would have fallen below the proposed requirements had they been in place in 2018.<sup>9</sup> Again, these figures likely understate the true impact due to the TBA hedging surcharge not being considered.

These figures drop sharply when the liquidity buffer is removed, with 0 percent to 29 percent of larger servicers falling below the proposed base liquidity requirements under 2018 market conditions. Similarly, smaller servicers that would not be subject to the liquidity buffer performed well under 2018 market conditions, with only 2 percent to 4 percent falling below the proposed base liquidity requirements (versus just over 1 percent that were below the Enterprise requirements in place in 2018).

The proposed changes to net worth and capital requirements would have had minimal impacts on the capacity of servicers (small and large) to remain compliant – even under 2018 market conditions. The non-compliance rates for both net worth and capital are little changed when the higher proposed requirements are back-tested to 2018 data.

Despite the fact that many institutions would not have been compliant with the proposed liquidity requirements had they been in place in 2018, the actual market experience during that period was not one of severe distress. There was no widespread failure to meet

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<sup>9</sup> The range of results is due to assumptions regarding the level of servicing featuring actual remittances relative to servicing featuring scheduled remittances. If all Enterprise servicing was on an actual basis, 29 percent of larger servicers would not have met the proposed requirements had they been in place in 2018. If all Enterprise servicing was on a scheduled basis, 53 percent of larger servicers would not have met the proposed requirements had they been in place in 2018.

advancing obligations or serve borrowers. The servicing sector functioned well and institutions across the industry maintained sufficient liquidity to operate effectively.

Across all categories and servicer types, the noncompliance rates are little changed between the actual requirements in place in 2021 and the proposed requirements under 2021 market conditions. This is not surprising given the stronger net worth, capital, and liquidity positions throughout the industry in 2021 relative to 2018, fueled by record volumes. The caveat regarding the inability to analyze the impact of the TBA hedging surcharge, however, remains.

The primary conclusion from this initial analysis is that the most severe impact of the proposed requirements is the combination of the higher base liquidity requirements and the liquidity buffer (as well as the TBA hedging surcharge) in periods of less favorable market conditions. Back-testing that incorporates only periods of high profitability – such as 2021 – would not capture these results or reflect the full impact of the FHFA proposal.

### ***Liquidity***

As FHFA and the Enterprises update the financial eligibility requirements to incorporate lessons learned from the COVID-19 pandemic and enhance the resiliency of the servicing sector, it is reasonable and appropriate that revisions to the liquidity framework for servicers be considered. While MBA does not object to an increase in the minimum liquidity requirements for servicers of Enterprise-backed loans, the various components of the proposed liquidity framework – base liquidity, a TBA hedging surcharge, and (for larger servicers) a liquidity buffer – together produce a substantial increase in required liquidity for most servicers. The magnitude of this increased requirement, as quantified below, is difficult to justify.

Under the proposed liquidity requirements, in a scenario in which hypothetical “Small Servicer A” maintains a servicing portfolio of \$15 billion in unpaid principal balance (evenly split across \$5 billion in actual Enterprise servicing, \$5 billion in scheduled Enterprise servicing, and \$5 billion in Ginnie Mae servicing) and a \$300 million TBA hedging position, the firm’s minimum liquidity requirement would grow from \$5.25 million to \$16.25 million – more than three times its current requirement.

Similarly, in a scenario in which hypothetical “Large Servicer B” maintains a servicing portfolio of \$75 billion in unpaid principal balance (evenly split across \$25 billion in actual Enterprise servicing, \$25 billion in scheduled Enterprise servicing, and \$25 billion in Ginnie Mae servicing) and a \$1.5 billion TBA hedging position, the proposal would increase the firm’s minimum liquidity requirement, inclusive of buffers, from \$26.25 million to \$103.75 million – a fourfold increase.

For servicers with portfolios that are more concentrated in Ginnie Mae servicing, this increase would be even more substantial. In a scenario in which “Large Servicer C”

maintains a servicing portfolio of \$75 billion in unpaid principal balance (split across \$10 billion in actual Enterprise servicing, \$10 billion in scheduled Enterprise servicing, and \$55 billion in Ginnie Mae servicing) and a \$1.5 billion TBA hedging position, the firm's minimum liquidity requirement would grow from \$26.25 million to \$127 million – a nearly fivefold increase.

<b>Small Servicer A</b>			
	<i>Current Requirements</i>	<i>Proposed Requirements</i>	<i>Change</i>
Base Liquidity (Actual Enterprise)	\$1.75 million	\$1.75 million	\$0
Base Liquidity (Scheduled Enterprise)	\$1.75 million	\$3.5 million	\$1.75 million
Base Liquidity (Ginnie Mae)	\$1.75 million	\$5 million	\$3.25 million
TBA Hedging	\$0	\$6 million	\$6 million
Liquidity Buffer	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$5.25 million</b>	<b>\$16.25 million</b>	<b>\$11 million (3.1x)</b>

<b>Large Servicer B</b>			
	<i>Current Requirements</i>	<i>Proposed Requirements</i>	<i>Change</i>
Base Liquidity (Actual Enterprise)	\$8.75 million	\$8.75 million	\$0
Base Liquidity (Scheduled Enterprise)	\$8.75 million	\$17.5 million	\$8.75 million
Base Liquidity (Ginnie Mae)	\$8.75 million	\$25 million	\$16.25 million
TBA Hedging	\$0	\$30 million	\$30 million
Liquidity Buffer	\$0	\$22.5 million	\$22.5 million
<b>TOTAL</b>	<b>\$26.25 million</b>	<b>\$103.75 million</b>	<b>\$77.5 million (4.0x)</b>

<b>Large Servicer C</b>			
	<i>Current Requirements</i>	<i>Proposed Requirements</i>	<i>Change</i>
Base Liquidity (Actual Enterprise)	\$3.5 million	\$3.5 million	\$0
Base Liquidity (Scheduled Enterprise)	\$3.5 million	\$7 million	\$3.5 million
Base Liquidity (Ginnie Mae)	\$19.25 million	\$55 million	\$35.75 million
TBA Hedging	\$0	\$30 million	\$30 million
Liquidity Buffer	\$0	\$31.5 million	\$31.5 million
<b>TOTAL</b>	<b>\$26.25 million</b>	<b>\$127 million</b>	<b>\$100.75 million (4.8x)</b>



Each of the three components of the liquidity framework contributes to this dynamic. While adjustments to each component are warranted, MBA recommends the most fundamental changes to the TBA hedging surcharge.

### ***Base Liquidity***

As is discussed in greater detail below, the recognition of differing risk profiles associated with actual servicing remittances and scheduled servicing remittances in the base liquidity requirements is appropriate and appreciated – as is the removal of the procyclical NPL threshold and surcharge. MBA does not object to somewhat higher base liquidity requirements to account for the elimination of the NPL threshold and surcharge. FHFA, however, should consider recalibration of the proposed base liquidity requirements.

The existing framework features a 3.5-basis-point base liquidity requirement across all agency servicing. This requirement effectively averages the differing risks associated with actual Enterprise servicing, scheduled Enterprise servicing, and Ginnie Mae servicing. FHFA appropriately distinguishes among these servicing types (as well as non-agency servicing) in the proposed requirements. Because actual Enterprise servicing entails the lowest liquidity risks among the various types of agency servicing, FHFA should set this base liquidity requirement at a point that is *lower* than the current “averaged” requirement of 3.5 basis points. A requirement of approximately 2.5 basis points likely is a more reasonable level for base liquidity on actual Enterprise servicing, though MBA and industry participants continue to engage in analysis and modeling with respect to this component of the framework.

With respect to scheduled Enterprise servicing, FHFA and the Enterprises have taken important steps to mitigate liquidity risk in recent years – most notably through the limitation of advancing obligations to four months. These steps have reduced the risk disparities between actual and scheduled Enterprise servicing. While these disparities do exist, industry analysis and modeling suggest that a 3.5-basis-point differential in base liquidity requirements is too large. As such, MBA recommends a differential closer to 2.5 basis points, which would set the base liquidity requirement for scheduled Enterprise servicing at 5 basis points. Again, MBA and industry stakeholders continue to analyze this component of the framework for purposes of refining this recommendation.

MBA does not object to a 3-basis-point differential between Ginnie Mae servicing and scheduled Enterprise servicing, as well as the inclusion of a 3.5-basis-point base liquidity requirement on non-agency servicing.

Together, these recommendations would produce a set of base liquidity requirements as follows:

- Actual Enterprise servicing: 2.5 basis points
- Scheduled Enterprise servicing: 5 basis points
- Ginnie Mae servicing: 8 basis points
- Non-agency servicing: 3.5 basis points

While this framework would represent a lower set of base liquidity requirements than those proposed by FHFA, it still represents a higher set of base liquidity requirements than those currently in place.<sup>10</sup> It also addresses MBA's concerns regarding the substantial increase in aggregate liquidity implied by the FHFA proposal.

### ***Origination Liquidity (TBA Hedging)***

Another component of the proposal that will lead to large increases in the minimum liquidity requirements for many servicers is the new origination liquidity element. While it is important that the industry be equipped to handle situations in which sudden market volatility generates margin calls on TBA hedge positions, MBA believes the proposed surcharge is flawed in its construction and should not be implemented until further analysis and refinement have taken place.

As with other components of the proposal, FHFA should ensure that the structure of the requirements creates incentives for servicers to engage in robust risk management. The use of positions in the TBA market to hedge the interest rate risk inherent in loan origination pipelines, for example, is a prudent strategy that lowers an institution's exposure to near-term swings in interest rates. A surcharge associated with these positions, however, creates a strong incentive for servicers to opt against hedging through the TBA market – either by using less efficient instruments or by no longer hedging their pipeline interest rate risk at all. This is not a desirable outcome, as it would increase the risk profile of institutions that refrain from hedging with TBA positions.

Market participants would benefit from FHFA sharing its analysis of the use of a 200-basis-point threshold for this requirement, as well. FHFA notes that this is meant to represent the stress movement in MBS prices in March 2020, though many industry stakeholders have raised concerns that this is not an appropriate benchmark, largely due to the nature of the extraordinary government intervention in the MBS market at the time. Other periods of market volatility over the past several decades, for example, have not featured this level of sudden movement in MBS prices.

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<sup>10</sup> The only scenario in which a servicer's base liquidity requirement would be lower under the MBA recommendations than under the current framework is one in which that servicer's portfolio consists almost entirely of Enterprise servicing with actual remittances – the type of servicing with the lowest liquidity risk. The minimum required base liquidity (not aggregate liquidity) for the three hypothetical servicers described above would increase under the MBA recommendations as follows: Servicer A: 48 percent (as opposed to 95 percent as proposed by FHFA); Servicer B: 48 percent (as opposed to 95 percent as proposed by FHFA); Servicer C: 96 percent (as opposed to 150 percent as proposed by FHFA).

It also is unclear why this 200-basis-point requirement is designed as an ongoing requirement rather than a buffer that is automatically reduced when margin calls are paid. If FHFA's rationale for setting the requirement at 200 basis points is that this represents the maximum level of margin call exposure for which a servicer should be prepared, there should be no need to keep the requirement at 200 basis points after a servicer begins meeting margin calls. Said differently, if severe market volatility led to margin calls equivalent to 100 basis points of a servicer's TBA exposure, requiring it to hold 200 basis points in liquidity on top of the 100 basis points already paid is functionally equivalent to a 300-basis-point requirement.

In this scenario, FHFA instead should allow servicers to use the prepositioned liquidity to meet margin calls, without also needing to replenish this liquidity during periods of severe market volatility. This is particularly relevant given that the timing mismatch associated with these margin calls is relatively short (that is, the loans in the pipeline generally will be sold profitably within a few weeks, offsetting the losses in the hedged position). As currently designed, this requirement amounts to a "double hit" when margin calls are assessed, as servicers need to meet the margin call *and* replenish the liquid assets associated with their TBA positions.

In addition, FHFA should clarify other details regarding this requirement before moving forward. Based on the proposal, it is not entirely clear how a servicer's "outstanding TBA hedging position" is defined and calculated. To produce a requirement that more accurately captures the risk associated with TBA positions, FHFA should clarify that netting arrangements are factored into the calculation (rather than relying on gross TBA positions). Many servicers maintain both long and short TBA positions, particularly in relation to MSR hedging activities. Such hedging would become less attractive if a liquidity surcharge is placed on gross TBA positions. By recognizing the netting of these positions, on the other hand, FHFA can more accurately quantify any risk exposure and better promote sound risk management.

FHFA also should clarify that this requirement only applies to servicers that originate mortgage loans, and therefore have a pipeline to hedge. While the text in the proposal references non-depository servicers "that originate[s] 1-4 unit single-family mortgage loans," the header of this section of the proposal notes that it is "applicable to all non-depository seller/servicers." It appears that FHFA's intent is to apply this requirement only to institutions that originate mortgage loans, but this needs to be made clear in any final set of requirements.

### ***Liquidity Buffer***

MBA's analysis of MBFRF data shows that the imposition of the liquidity buffer – had the proposed requirements been in place in 2018 – would have caused many larger servicers to fall below their required liquidity levels. While it is possible that some servicers could have received permission to draw on their buffer during this period, in practice, the buffer

will be treated as a minimum requirement by servicers and by warehouse lenders, investors, and other counterparties.

To observe the impact of the buffer, one can consider the hypothetical Large Servicer B discussed earlier, with a \$50 billion Enterprise servicing portfolio and a \$25 billion Ginnie Mae servicing portfolio. Under current requirements, that servicer must hold at least \$26.25 million in liquid assets. The proposed liquidity buffer for this servicer would be \$22.5 million – that is, the buffer alone is nearly as large as the *total* liquidity required of this servicer today. For hypothetical Large Servicer C, its buffer of \$31.5 million would be larger than its current *total* liquidity requirement of \$26.25 million.

As a result, FHFA should consider the impact of the buffer on the ability of larger servicers to meet their liquidity requirements during periods of low profitability or high market stress. If the buffer consistently would have caused a substantial number of servicers to fall below their minimum requirements, FHFA should reduce the level of the buffer. More broadly, FHFA should review the level of the buffer in the context of the substantial increase in liquidity necessitated by the combination of the base requirements, the TBA hedging surcharge, and the buffer.

The design of the liquidity buffer also raises serious questions regarding its implementation. FHFA proposes that a servicer only be permitted to draw on its buffer with approval from an Enterprise – though it is not clear if this means the approval of a single Enterprise or both Enterprises. A servicer should not, however, be required to obtain permission from an Enterprise (or FHFA) to access its liquidity buffer. If there is severe liquidity stress, either for a particular institution or in the market, it is not prudent to delay a servicer's access to this liquidity. The time needed for an Enterprise to grant permission could be damaging to an institution if unexpected liquidity needs arise quickly due, for example, to highly volatile market conditions.

More broadly, it is not clear what is achieved by a construct that requires an Enterprise to grant a servicer the ability *to access its own funds*. In practice, if a servicer must use liquid assets to meet obligations to its creditors, it will do so and address any consequences related to its draw on the buffer as necessary. Servicers therefore should be subject to a requirement that they *notify* the Enterprises when they draw on their buffer, rather than a requirement that they first seek permission to do so. This construct is more logical, more reflective of market realities, and less likely to exacerbate periods of severe stress.

FHFA also proposes requiring larger servicers to develop remediation plans to restore their buffer following a draw. The parameters of this requirement are not entirely clear, and FHFA should require servicers to submit such a plan only if they remain below their buffer for two consecutive quarters. This requirement would avoid the development of an unnecessary remediation plan if a servicer briefly accesses its buffer and quickly restores it.

### ***Eligible Assets for Liquidity***

The proposed base liquidity, TBA hedging surcharge, and liquidity buffers combine to determine a servicer's minimum level of required liquidity. As servicers manage their operations and finances to comply with this requirement, the composition of their liquid assets will – in many cases – be as important as the level of liquid assets they must hold.

The proposal would maintain the existing set of eligible assets to meet the liquidity requirements: cash, cash equivalents, agency MBS, Enterprise obligations, and U.S. Treasury securities. Until recently, however, servicers also were permitted to include the available portions of committed servicing advance lines of credit.

When FHFA proposed to remove committed lines of credit from the calculation of liquid assets in January 2020, MBA detailed several reasons that this change would be inappropriate.<sup>11</sup> The most fundamental of these reasons is that committed lines of credit are, by their nature, durable in ways that uncommitted lines of credit are not. Committed lines of credit only can be withdrawn in response to one or more specific covenant violations or prespecified triggers, and they are not subject to withdrawal due to external factors that are not addressed in the contractual relationship between the two parties.

The removal of committed lines of credit from the calculation of liquid assets also removes incentives for servicers to engage in more robust risk management practices. Servicers must pay an additional cost to obtain committed lines of credit rather than uncommitted lines of credit. If these committed lines of credit provide no benefit in terms of compliance with the Enterprises' minimum liquidity requirements, many institutions may decide that the additional payment is not warranted. This could result in greater use of uncommitted lines of credit, which are more likely to be withdrawn in periods of market stress.

Absent credit for the available portion of committed lines of credit, servicers will have the perverse incentive to draw down these lines at the end of each reporting period. Converting these lines of credit into cash at each quarter-end – only to reverse this action shortly thereafter – is highly inefficient and unproductive, particularly if done simply for compliance purposes rather than due to an actual business need. More importantly, this process would do nothing to improve the resiliency of servicers.

While FHFA declined to implement its January 2020 proposal, in December 2020 it nonetheless directed the Enterprises to remove the available portion of committed lines of credit from the calculation of liquid assets.<sup>12</sup> This was a particularly puzzling decision,

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<sup>11</sup> MBA, "Industry Views on Updated Eligibility Requirements for Enterprise Single-Family Seller/Servicers," April 30, 2020. Available at: <https://www.mba.org/industry-resources/resource/mba-letter-to-fhfa-on-servicer-requirements2>.

<sup>12</sup> Fannie Mae, "Selling Guide Announcement (SEL-2020-07)," December 16, 2020. Available at: <https://singlefamily.fanniemae.com/media/24631/display>. Freddie Mac, "Bulletin 2020-48," December 16, 2020. Available at: <https://guide.freddiemac.com/app/guide/bulletin/2020-48>.

not only because it took place outside of the process that had been established to reassess the liquidity requirements, but also because FHFA had cited its intention to “incorporat[e] lessons learned from the evolving COVID-19 national emergency” in this reassessment.<sup>13</sup>

With respect to committed lines of credit, the lesson learned from the pandemic was a clear one: these lines are durable and accessible to servicers in periods of market stress. Despite widespread concerns regarding liquidity and potential advancing obligations in March 2020, committed lines of credit to servicers remained in place and were available without interruption. This was the case for committed lines of credit backed by servicing advances, which finance government-guaranteed receivables and are not subject to mark-to-market accounting, as well as lines backed by MSRs. If these lines of credit were durable enough to withstand a severe macroeconomic shock, unprecedented economic uncertainty, and a subsequent global recession, it is not clear what type of scenario would lead to their widespread withdrawal.

Given this experience through the COVID-19 pandemic, FHFA should revisit its December 2020 decision and provide recognition of committed lines of credit. If FHFA has additional concerns about this approach, it should forgo the “all or nothing” approach by which committed lines of credit receive full credit or no credit for purposes of calculating liquid assets. One viable approach would be to ensure servicers are not entirely reliant on committed lines of credit at the expense of cash or liquid securities by capping the use of committed lines of credit for purposes of meeting the liquidity requirements.

In this scenario, FHFA could adopt a framework by which a servicer cannot use committed lines of credit to satisfy more than 50 percent of its total liquidity requirement. If a servicer has a \$40 million total liquidity requirement, for example, it would not be permitted to satisfy more than \$20 million of this requirement using committed lines of credit – even if it has more than \$20 million in such lines available. This concept addresses any concerns FHFA might have about the quality of a servicer’s liquid assets, while recognizing the important role of committed lines of credit as a reliable liquidity risk management tool. A similar option would entail FHFA limiting the recognition of committed lines of credit to a servicer’s base liquidity requirements. This option also would ensure that, for servicers subject to liquidity buffers, the entirety of the liquidity requirement could not be met through committed lines of credit.

Other options include a haircut on the available portions of committed lines of credit (e.g., only 80 percent of a servicer’s available lines could be used to satisfy the liquidity

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<sup>13</sup> Federal Housing Finance Agency, “FHFA to Re-Propose Updated Minimum Financial Eligibility Requirements for Fannie Mae and Freddie Mac Seller/Servicers,” June 15, 2020. Available at: <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-to-Re-Propose-Updated-Minimum-Financial-Eligibility-Requirements-for-Fannie-Mae-and-Freddie-Mac-Seller-Servicers.aspx>.

requirements) or a limitation based on maturity (e.g., available lines cannot be used to satisfy the liquidity requirements if they are scheduled to mature within 90 days).

### ***Other Large Servicer Requirements***

In addition to the liquidity buffer, the proposal contains two other requirements specific to larger servicers: third-party ratings and capital/liquidity plans. Both of these requirements can be further refined and clarified to better align with the objectives of the proposal.

The rating requirements draw from the existing Ginnie Mae requirements, which specify that issuers obtain a primary servicer rating if their Ginnie Mae servicing portfolio exceeds \$25 billion, obtain one credit rating if this portfolio exceeds \$50 billion, and obtain two credit ratings if this portfolio exceeds \$75 billion.<sup>14</sup> The proposed Enterprise requirements mirror the Ginnie Mae requirements, though the thresholds are doubled (\$50 billion, \$100 billion, \$150 billion) because the requirements would be based on the institution's entire single-family servicing portfolio.

An important element of the Ginnie Mae requirements is the ability of an institution to request an exemption from the primary servicer rating "if it has delegated servicing responsibilities to another Ginnie Mae issuer that has already obtained and submitted a primary servicer rating"<sup>15</sup> (i.e., it contracts with an approved subservicer). This is a particularly necessary provision if the proposal is adopted for use by the Enterprises. For large institutions that invest in MSRs of Enterprise-backed loans but do not have servicing operations, a primary servicer rating is not warranted – and may not even be possible to obtain. FHFA, therefore, should provide a similar exemption to the primary servicer rating requirement, as well as guidance that such exemptions are expected to be granted if MSR investors without servicing operations contract with approved subservicers.

The credit rating requirement, which presumably is meant to provide more information regarding the financial strength of the institution, serves a purpose that partially overlaps with the net worth, capital, and liquidity requirements. While credit ratings may assist the Enterprises in evaluating the financial strength of their counterparties, strong net worth, capital, and liquidity positions are even more valuable as a form of counterparty risk management. As such, the proposal should permit servicers to apply for an exemption from the credit rating requirements if they meet heightened net worth, capital, and liquidity requirements that are set at a level above the minimum requirements plus any applicable buffer. This option parallels the Ginnie Mae provision that issuers that do not satisfy minimum credit ratings may be subject to additional financial requirements. For those servicers that maintain net worth, capital, and liquidity well beyond the required minimum levels and associated buffer, a credit rating may not provide significant additional value

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<sup>14</sup> Ginnie Mae MBS Guide, Chapter 3, Part 18, Section B. Available at: [https://www.ginniemae.gov/issuers/program\\_guidelines/MBSGuideLib/Chapter\\_03.pdf](https://www.ginniemae.gov/issuers/program_guidelines/MBSGuideLib/Chapter_03.pdf).

<sup>15</sup> Ibid.

and should not be mandated in all cases. To that end, FHFA should provide further details regarding how any ratings will be used and the manner in which the rating received by a servicer may impact its counterparty relationship with the Enterprises.

While the implementation timeline for the proposal is discussed in greater detail below, FHFA also should acknowledge that servicers without existing primary servicer ratings or credit ratings may not be able to obtain the necessary ratings by year-end 2022. As such, an 18-month effective date is far more reasonable. FHFA also should clarify that both public and private ratings are acceptable for the purpose of satisfying these requirements, as both types of ratings are prevalent in the market and are developed using the same standards.

With respect to capital/liquidity planning, FHFA proposes that annual plans submitted by larger servicers include liquidity stress tests that feature stress testing of MSR valuations. Before any such requirements are implemented, impacted servicers will need much more information regarding the design and nature of these stress tests. This additional information includes the relationship between the stress tests conducted for the Enterprises and those conducted in accordance with Ginnie Mae program guidelines. FHFA should coordinate and align with Ginnie Mae to minimize duplicative efforts and reduce the burdens associated with multiple stress testing regimes. FHFA also should provide greater detail as to how it and the Enterprises will use the information provided in these capital/liquidity plans. In doing so, FHFA and the Enterprises should acknowledge that a diversity of business models and capital/liquidity planning efforts is positive for the industry and for broader market resiliency.

Finally, the broad set of requirements specific to larger servicers will take time, effort, and planning with respect to implementation. These factors will weigh heavily on institutions that have servicing portfolios of less than \$50 billion at the time the new requirements take effect, but subsequently grow and cross this threshold. In these situations, servicers should be provided with adequate time to comply with the liquidity buffer, third-party ratings, and capital/liquidity planning requirements. FHFA, therefore, should clarify the timeline by which servicers will be expected to come into compliance with these new requirements after their portfolios exceed \$50 billion. This timeline should not be shorter than six months.

### ***Net Worth***

In the proposal, FHFA maintains the recalibrated minimum net worth requirements featured in its 2020 framework, while also proposing to remove deferred tax assets from the calculation. MBA did not object to the higher multiplier for Ginnie Mae servicing in the previous proposal and does not do so in this proposal. MBA also does not object to the removal of deferred tax assets from the net worth calculation.



Based on internal MBA analysis, the updates to the net worth requirements would have increased the share of institutions falling below the minimum from 3.0 percent to 3.7 percent of reporting servicers in the fourth quarter of 2018 and would have left this figure unchanged at 0.6 percent of reporting servicers in the fourth quarter of 2021. It does not appear, therefore, that there will be significant compliance challenges for servicers associated with this new requirement.

### ***Capital***

FHFA also proposes to raise the minimum capital requirement from 6 percent to 9 percent, measured as tangible net worth divided by total assets. MBA's internal analysis shows that this is not expected to impact compliance materially for most servicers. The share of institutions falling below the minimum would have increased from 2.0 percent to 7.7 percent of reporting servicers in the fourth quarter of 2018 and from 1.5 percent to 3.6 percent in the fourth quarter of 2021. MBA does not, therefore, object to the higher minimum requirement proposed by FHFA, though there are ways that FHFA can improve the implementation of its capital requirement.

FHFA should clarify that its definitions of "tangible net worth" and "total assets" conform to existing practices and the evolution of Generally Accepted Accounting Principles (GAAP).<sup>16</sup> In doing so, FHFA should exclude from total assets any non-economic GAAP "gross-ups" that commonly are used in the mortgage industry. Such assets typically are related to legal true sales that do not meet sale accounting for GAAP purposes, thereby requiring that the asset and a matched liability be recognized on the institution's balance sheet. FHFA should codify, for example, a common waiver related to Home Equity Conversion Mortgage (HECM) securities used by the Enterprises that addresses this issue.

FHFA also should exclude from total assets any long-term subservicing that is retained following the sale of MSRs. Such subservicing is recognized on the balance sheet only for subservicing agreements over one year in length. Without a codified waiver, servicers would be put in the position of seeking shorter-term subservicing agreements, which runs counter to the interests of the servicer, FHFA, and the Enterprises. Longer-term subservicing agreements that are not associated with the sale of MSRs, moreover, do not result in GAAP requirements that they be treated as financing.

Finally, FHFA should clarify its calculation of total assets with respect to the updated guidelines from the Financial Standards Accounting Board (FASB) regarding capitalization of leases.

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<sup>16</sup> FHFA and the Enterprises should ensure that state regulators implementing requirements that are indexed to the Enterprise counterparty requirements do so in a manner that is consistent with the interpretations used by the Enterprises. The reduction of tangible net worth by "pledged assets net of associated liabilities," for example, should be applied in a uniform manner – recognizing the exclusions to pledged assets for purposes of this calculation.

Codification of common waivers or exclusions such as these is particularly important because many state regulators may look to the FHFA framework for guidelines regarding the calculation of this requirement.<sup>17</sup>

### ***Adjustments from Prior Proposals***

While MBA maintains serious concerns about certain elements of the updated framework, as described above, the proposal also reflects several significant improvements relative to both current requirements and earlier proposals put forth by FHFA and Ginnie Mae. These improvements – the elimination of the procyclical NPL threshold and surcharge, differentiation between actual and scheduled servicing remittances, and no inclusion of a risk-based capital ratio requirement – are responsive to stakeholder input and should improve incentives for robust risk management across the industry.

The proposal removes the current requirement that servicers strengthen their liquidity positions during periods of heightened delinquencies. The procyclical nature of this NPL threshold and surcharge requires servicers to grow their liquid assets at a time when these assets are most needed to be used to meet obligations. This element of the existing framework – and the 2020 proposal – stands proper liquidity risk management on its head, as servicers instead should build liquidity during periods of market strength (low delinquencies) and use this liquidity to manage servicing advances and other obligations during periods of market weakness (high delinquencies). The proposal rectifies this flaw with a more appropriate structure that does not include heightened requirements when NPLs rise.

The existing framework also fails to distinguish between the varying liquidity risks associated with servicing advance obligations according to remittance type. Because actual remittances feature lower liquidity risk than scheduled remittances, it is sensible for an updated framework to include differing base liquidity requirements for these portions of a servicing portfolio. While, as noted above, MBA recommends adjustments to the calibration of these base liquidity requirements, the proposal improves upon the current framework for servicers of Enterprise-backed loans.

In its 2021 request for input, Ginnie Mae proposed a risk-based capital ratio requirement that would have established a substantially higher capital charge on MSR. This higher capital charge was derived from a deduction of “excess MSRs” from a servicer’s adjusted

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<sup>17</sup> The Conference of State Bank Supervisors has acknowledged the use of these waivers or exclusions by the Enterprises, noting “In practice, the minimum capital ratio is calculated based on a GAAP as well as a non-GAAP basis, the latter reflecting allowable, documented [Enterprise] removals for assets and liabilities associated with items such as reverse mortgages, subservicing contracts, rights to MSRs, seriously delinquent loans in Ginnie Mae MBS and optional early buyout balances and securitized loan balances where only a residual interest is owned.” See: CSBS, “Final Model State Regulatory Prudential Standards for Nonbank Mortgage Servicers,” July 23, 2021. Available at: [https://www.csbs.org/sites/default/files/2021-08/Final%20Model%20Prudential%20Standards%20-%20July%2023%2C%202021%20Board%20Approved%20Aug\\_1.pdf](https://www.csbs.org/sites/default/files/2021-08/Final%20Model%20Prudential%20Standards%20-%20July%2023%2C%202021%20Board%20Approved%20Aug_1.pdf).

net worth, as well as a 250 percent risk weight associated with MSRs. Together, these elements had the potential to significantly reduce the demand for, and liquidity of, MSRs – thereby weakening rather than strengthening the resiliency of the servicing sector. MBA appreciates that FHFA did not include this type of requirement in the proposal.

### ***Other Structural Reforms to Enhance Resiliency***

Increases in net worth, capital, and liquidity requirements can improve the resiliency of the mortgage servicing sector, but there are many other actions that a variety of agencies could take to bolster resiliency, as well. These actions should be prioritized to promote smooth market functioning and a deep, liquid market for MSRs.

- **FHLB Membership**: FHFA should consider mechanisms by which well-managed institutions that are primarily engaged in housing finance and meet appropriate financial benchmarks can gain eligibility for FHLB membership. MBA expects this framework would be particularly appropriate for independent mortgage banks (IMBs) and mortgage real estate investment trusts (REITs). Such eligibility could come directly through legislative actions to permit membership or through regulatory actions to permit greater use of captive insurance affiliates, as has been permitted previously. FHFA also could explore leveraging the existing “housing associate” designation to provide IMBs, mortgage REITs, and other institutions with access to more stable liquidity through advances. Expanded membership could entail FHLBs offering advances that are collateralized by MSRs or servicing advances. This expansion of FHLB membership eligibility, if exercised responsibly, would diversify and strengthen liquidity sources for IMBs and mortgage REITs while further promoting the housing finance mission of the FHLB System.
- **FHA Servicing**: Misalignment in servicing requirements across various federal agencies and the Enterprises raises costs for servicers while also producing varied outcomes for borrowers. Standardization of these requirements – particularly the adaptation of FHA requirements to better align with those of the Enterprises – would increase the value of Ginnie Mae MSRs and the overall health and strength of servicers with Ginnie Mae portfolios. FHA should implement several servicing improvements, including further alignment in loss mitigation policy to help struggling borrowers, adoption of a single foreclosure timeline, and use of proportional curtailment of interest and expense advances. To attract as many institutions as possible to FHA lending and servicing, FHA also should ensure that litigation risks related to the use of the False Claims Act to penalize minor underwriting defects are eliminated.
- **Ginnie Mae Platform Capabilities**: A long-running concern with the current Ginnie Mae structure is the difficulty and complexity associated with issuers obtaining third-party financing for Ginnie Mae MSRs, particularly in contrast to Enterprise MSRs. Important changes to the Ginnie Mae Acknowledgement Agreement are needed to facilitate bifurcation of MSRs and advance receivables. This

bifurcation would allow third-party MSR lenders to be compensated in the event of an issuer default without being required to take on the obligations associated with servicing the loans. With this greater flexibility, there likely would be a larger pool of MSR lenders offering financing on more attractive terms. Further, Ginnie Mae issuers are the only institutions permitted to own Ginnie Mae MSRs, despite demand from other types of investors. Reforms to the Ginnie Mae structure that allow “passive” MSR ownership by additional parties would increase bids for MSRs and improve pricing, which would flow through to lower interest rates for consumers. Related reforms would allow the “splitting” of Ginnie Mae pools to increase the demand for, and liquidity of, Ginnie Mae MSRs.

- Ginnie Mae Advancing Obligations: The most significant strain on Ginnie Mae issuers takes the form of advancing obligations on delinquent loans that are far more onerous than the comparable system in place at the Enterprises. Whereas servicers of Enterprise-backed loans generally are limited to advancing missed borrower payments to MBS investors for four months, Ginnie Mae issuers must do so until the loan re-performs or is liquidated (including through loan buyouts, which require additional issuer resources) – a period that often takes much longer than four months. Because the loans backing Ginnie Mae securities typically have higher risk factors than the loans backing Enterprise securities, Ginnie Mae issuers are exposed to a greater likelihood of being called upon to advance delinquent payments for extended periods of time. Ginnie Mae should take active steps to explore a fundamental rebalancing of its program structure to mitigate these risks. Such a rebalancing could entail Ginnie Mae reimbursing issuers in a manner similar to that of the Enterprises after short periods of issuers advancing delinquent borrower payments – likely in conjunction with an increase in the guarantee fees charged by Ginnie Mae to enable it to carry out these reimbursements.
- Ginnie Mae PTAP: Ginnie Mae should consider ways to better ensure issuers have access to reliable sources of liquidity in the event they face temporary liquidity shortfalls. One such option would be for Ginnie Mae to make PTAP available for situations beyond natural disasters or pandemics. PTAP allows issuers to obtain assistance from Ginnie Mae in meeting their advancing obligations, with the program set up as a “last resort” that carries an above-market interest rate on funds provided to the issuer. These conditions are reasonable and appropriate to avoid imprudent reliance on PTAP by issuers. To make PTAP a more effective option for liquidity support in exigent circumstances, however, Ginnie Mae should follow the example it set with respect to the COVID-19 amendments to PTAP and confirm that use of this assistance does not, on its own, constitute a basis for default. This provision would decrease the likelihood that use of PTAP would trigger other adverse actions, such as the loss of warehouse funding or supervisory actions by state regulators. Ginnie Mae also should amend its MBS Guide to enable the use of PTAP in situations beyond

natural disasters or pandemics, which would allow it to address other instances of temporary issuer liquidity shortfalls.

- Basel Treatment of MSRs: The federal banking regulators have implemented a Basel framework for bank capital requirements that includes punitive treatment of MSRs – a problematic approach that reduces broader demand for MSRs. MBA has advocated forcefully in favor of critical revisions to this approach, such as an increase in the limit on MSRs as a percentage of capital and a decrease in the risk weight associated with MSRs. The existing requirements are far too conservative relative to the actual risks posed by MSRs and have played an important role in discouraging many banks from more active participation in mortgage servicing. Both depository and non-depository institutions instead should be encouraged to participate in this market, which would boost MSR liquidity, diversify servicing, and reduce concentration risk.
- Agency MBS Margining Practices: As is noted above, the industry’s March 2020 experience with margin calls on TBA positions used as loan pipeline hedges is a clear indication that margining practices and requirements are in need of reevaluation. Margin calls based on short-term fluctuations in hedge positions should not reach destabilizing levels when the loan originator maintains high-quality, liquid assets that can offset these losses fairly quickly. The Securities and Exchange Commission, the Financial Industry Regulatory Authority, the Federal Reserve Bank of New York, FHFA, and the Treasury Market Practices Group should examine agency MBS margining practices and requirements to ensure broker-dealers and other providers of financing have the ability to exercise flexibility with their clients under these extreme circumstances. FHFA also should examine the practices of the Enterprises as providers of such financing and endorse the use of position limits rather than reliance on margin calls.

### ***Implementation Timeline***

In conjunction with the release of the proposal, FHFA noted that it expects to finalize its updated framework by June 30, 2022. In the proposal, it further notes that it expects the vast majority of the new requirements to take effect on December 31, 2022.

This timeline is far more hurried than comparable timelines typically associated with changes to capital and liquidity requirements for banks or other financial institutions. FHFA first should work closely with the Enterprises to evaluate the recommendations submitted by stakeholders – a process that should not be rushed to meet a June 30, 2022 deadline.

Once a framework is finalized, changes should be implemented over a period of more than six months, particularly given the magnitude of the expected increases in minimum liquidity requirements. Even among servicers that already are compliant, many will need to adjust their operations to achieve the “cushion” above the minimum requirements that

they seek to maintain as a matter of prudent risk management. For servicers that may not meet the heightened minimum requirements, a period of longer than six months should be provided for them to strengthen their net worth, capital, and liquidity positions to come into compliance. The more these actions can be spread out (particularly when several institutions are forced to take similar actions, such as sales of similar types of assets), the lower the likelihood that smooth market functioning would be impeded. As was noted above, institutions that need to obtain new primary servicer or credit ratings functionally may not be able to do so within six months, as well.

MBA therefore recommends that FHFA set an effective date for the entire proposal of 18 months following publication of a finalized framework. This is a sensible timeline that will better ensure servicers have ample opportunity to adjust their business activities, operations, and risk management practices as needed.

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MBA once again thanks FHFA for the opportunity to provide comments on the re-proposed eligibility requirements for Enterprise seller/servicers, as well as for the continued efforts to harmonize requirements across the Enterprises, Ginnie Mae, and state regulators. Extensive engagement with industry and other stakeholders is critical as FHFA seeks to properly calibrate the net worth, capital, and liquidity framework for servicers of Enterprise-backed loans.

Without proper calibration of these requirements, unintended consequences likely would include more institutions selling loans only through the cash window rather than an MBS execution, shifts in volume away from the Enterprises or Ginnie Mae for reasons that are not determined by market conditions, and potential consolidation in the industry, resulting in fewer choices and higher costs for borrowers. Proper calibration of these requirements, on the other hand, will promote resiliency in the market and broad, sustainable access to credit for consumers. MBA looks forward to the ongoing collaboration to achieve this result.

Should you have any questions or wish to discuss further, please contact Pete Mills, Senior Vice President of Residential Policy and Strategic Industry Engagement, at (202) 557-2878 or [pmills@mba.org](mailto:pmills@mba.org).

Sincerely,



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