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MORTGAGE BANKERS ASSOCIATION

October 5, 2020

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

**RE: FHFA Strategic Plan: Fiscal Years 2021-2024**

Dear Director Calabria:

The Mortgage Bankers Association (MBA)[1] would like to thank the Federal Housing Finance Agency (FHFA) for the opportunity to comment on the recently released Strategic Plan for Fiscal Years 2021-2024 (Strategic Plan)[2]. The Strategic Plan gives the public and interested stakeholders a valuable opportunity to gain insight and provide comments on the activities and priorities of FHFA in the coming years. MBA appreciates that the Strategic Plan builds on the previously released 2019 Strategic Plan for the Conservatorships of Fannie Mae and Freddie Mac[3] (the Enterprises) and the 2020 Scorecard for Fannie Mae, Freddie Mac, and Common Securitization Solutions[4], and also

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,100 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, credit unions, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org

[2] Federal Housing Finance Agency, "FHFA Strategic Plan: Fiscal Years 2021- 2024" September 22, 2020. Available at: https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA_StrategicPlan_9222020.pdf

[3] Federal Housing Finance Agency, "The 2019 Strategic Plan for the Conservatorships of Fannie Mae and Freddie Mac" October 28, 2019. Available at: https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2019-Strategic-Plan.pdf

[4] Federal Housing Finance Agency, "2020 Scorecard for Fannie Mae, Freddie Mac, and Common Securitization Solutions" October 28, 2019. Available at: https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2020-Scorecard-10282019.pdf

aligns in many respects with reform plans released by the Department of the Treasury (Treasury)[5] and the Department of Housing and Urban Development.[6]

MBA strongly supports the three overarching goals that FHFA identifies and describes in the Strategic Plan:

- Ensure safe and sound regulated entities through world-class supervision;
- Foster competitive, liquid, efficient, and resilient national housing finance markets; and
- Position FHFA as a model of operational excellence by strengthening the workforce and infrastructure.

Each of these goals is critical to maintaining a housing finance system that facilitates broad access to credit for qualified borrowers while also promoting competitive markets and protecting taxpayers. MBA firmly believes that the Enterprises should be released from conservatorship only when they have the financial strength to do so *and* after important market conduct reforms are made sufficiently durable. It is with this perspective that we offer the following comments on the Strategic Plan.

## I. OBJECTIVE 1.3. RESPONSIBLY END THE CONSERVATORSHIPS OF THE ENTERPRISES

### Financial Strength of the Enterprises

Capital Framework and Credit Risk Transfer

One of the proximate causes of the Enterprises' distress in 2008 was the insufficient capital they maintained. If the Enterprises are to once again operate outside the confines of conservatorship, they must be subject to a more robust capital framework that corrects the failings of prior frameworks. Progress towards establishing adequate financial strength at the Enterprises has taken the form of FHFA's recent rulemaking efforts to develop a new set of capital requirements for the Enterprises. The re-proposed rule that would institute these new capital requirements is significantly improved from the previous version in some respects, although MBA remains concerned about specific elements of the proposed framework, including the manner in which it recognizes the protection offered by credit risk transfer (CRT) mechanisms.

[5] Department of the Treasury, "U.S. Department of the Treasury Housing Finance Reform Plan" September 5, 2019. Available at: https://home.treasury.gov/system/files/136/Treasury-Housing-Finance-Reform-Plan.pdf

[6] Department of Housing and Urban Development, "Housing Finance Reform Plan" September 5, 2019. Available at: https://home.treasury.gov/system/files/136/HUD-Housing-Finance-Reform-Plan-September-2019.pdf

In certain situations, for example, use of CRT by an Enterprise not only would fail to reduce required capital under the framework, but instead would increase it. This outcome is perplexing and counterintuitive given the broad public support for CRT from FHFA and other government stakeholders. The Strategic Plan for Fiscal Years 2018-2022[7], for example, includes an objective to "promote credit risk transfers that reduce taxpayer risk by attracting private capital."

We note that there is no mention of an objective of promoting CRT in the newly issued Strategic Plan. We urge FHFA to ensure that any strategic planning for releasing the Enterprises from conservatorship responsibly reduces taxpayer risk by providing sufficient capital and other incentives to continue their CRT activities.

Government Support for the Enterprises

Prior to the release of the Enterprises from conservatorship, FHFA and Treasury should clarify the precise parameters of any government support or backstop for the Enterprises. The most appropriate approach to ensure a deep, liquid secondary market while promoting market discipline at the Enterprises would be for Congress to establish a permanent, paid-for federal government backstop on mortgage-backed securities (MBS) issued by the Enterprises. In the absence of such action by Congress, FHFA and Treasury can take administrative steps to leverage the limited explicit guarantee already in place through the Senior Preferred Stock Purchase Agreements (PSPAs). The PSPAs effectively provide an explicit guarantee of Enterprise-issued MBS; they do so, however, by committing to provide funds to support all Enterprise obligations, not only those linked to MBS. Restructuring the commitment under the PSPAs would enable the explicit guarantee to apply only to Enterprise-backed MBS in the future, rather than to the full debt obligations of the Enterprises. A more clearly defined guarantee is a critical element of any Enterprise reform effort, as it promotes the broad availability of affordable mortgage credit and the capacity of the Enterprises to support the market through all parts of the credit cycle.

## II. OBJECTIVE 2.1: INSTITUTE REFORMS AT THE REGULATED ENTITIES THAT SERVE TO FOSTER "CLEAR" NATIONAL HOUSING FINANCE MARKETS

### Market Conduct of the Enterprises

Reforms to the capital framework and government backstop are only two components of a larger set of reforms needed to create a solid foundation for the Enterprises to operate safely and effectively outside of conservatorship. MBA believes that the Enterprises

[7] Federal Housing Finance Agency, "FHFA's Strategic Plan: Fiscal Years 2018-2022" September 27, 2017. Available at: https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/StratPlan_PI_9272017.pdf

should not be permitted to exit conservatorship until further systematic, wholesale, and long-term reforms are made sufficiently permanent. MBA appreciates that several of these reforms are identified in the Strategic Plan. Objective 2.1, for example, addresses important reform elements such as equal access to the secondary market, limits on the activities of the Enterprises, and support for the Uniform MBS (UMBS).

Equal Access to the Secondary Market

The Enterprises should facilitate access to the secondary market on equal terms for lenders of all sizes and business models. Such a framework is key to promoting access to mortgage credit throughout the nation and discouraging concentration in the primary single-family mortgage market that is divorced from market-based factors. Through recent directives, FHFA has taken positive steps to ensure that single-family guarantee fee discounting or other favorable pricing or underwriting variances are not provided to market participants based on their volume, size, or business model. Any directives issued under FHFA's conservatorship authority are not sufficiently permanent, however, and should be made more durable through the rulemaking process.

FHFA has authority to ensure that the operations and activities of each Enterprise "foster liquid, efficient, competitive and resilient national housing financing markets,"[8] and that each Enterprise operates in a manner consistent with its charter and with the public interest. Ensuring that lenders maintain access to the secondary market through the Enterprises on equal terms very clearly falls within this authority and would lead to a healthier long-term market structure.

The concept of equal access also applies to interactions between the Enterprises and primary single-family mortgage market participants. MBA believes that guardrails should be put in place to ensure the Enterprises are not subject to undue influence by any individual shareholder that also operates in the primary market. If one or more mortgage lenders holds a substantial portion of an Enterprise's equity, it could potentially use its influence to provide it with certain advantages over its competitors in the primary market – for example, by driving policies that provide it with better secondary market executions or favorable technology integrations from that Enterprise relative to those available to other lenders.

FHFA is expressly authorized to "reject any acquisition or transfer of a controlling interest in a regulated entity"[9] if warranted on the basis of the Director's "principal duties." These principal duties include ensuring that the operations of the Enterprises are consistent with the public interest, ensuring that the Enterprises operate in a safe and sound manner, and fostering "liquid, efficient, competitive and resilient national housing finance markets."

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[8] 12 U.S.C. § 4513(a)(1)(B)(ii), (iv), (v).

[9] 12 U.S.C. § 4513(a)(2).

Using this authority, FHFA should propose regulations that clearly define what constitutes a "controlling interest" in an Enterprise. MBA believes individual lenders or holding companies with lender subsidiaries should be limited in their ownership interest in any Enterprise. (We have previously recommended a 10 percent threshold,[10] though a lower threshold may be appropriate.) In addition, these regulations should outline clearly the process by which FHFA evaluates said controlling interest and exercises the authority to "reject" a transfer or acquisition of a controlling interest that could negatively impact the safety and soundness of the Enterprises or impede their ability to support a robust housing finance system.

<u>New Activities or Products</u>

Market conduct reforms also are needed to establish appropriate limits on activities undertaken by the Enterprises and to clarify the standards for the development of new products, activities, and technologies. As the Enterprises continue to partner with other market participants to innovate by developing new products and activities, it is important that the processes by which these measures are undertaken are fair, transparent, and supportive of the overall market. FHFA should enhance the approval process for new Enterprise products, activities, and technologies by instituting clear criteria for FHFA's evaluation, as well as provide clear parameters on the process by which the Enterprises offer pilot programs or other "early-to-market" opportunities.

Such pilot programs are critical elements of the product/activity development process; they should protect proprietary information, but they should not confer prolonged or permanent first-mover benefits to those institutions selected to participate in pilot programs (beyond those benefits necessary to carry out the objectives of the pilot program). Once it is determined that a new product/activity is viable, it should be made available across the market as quickly as possible.

Similarly, FHFA should ensure that any new technologies developed or used by the Enterprises support, not supplant, primary single-family mortgage market activities. Technological innovation should be promoted, but technology should not allow the Enterprises to displace lenders and vendors operating in the primary market, or effectively choose winners and losers among primary market participants. FHFA can use its existing authority to address new products, activities, and technologies by implementing a more robust review process for these offerings, including more transparent evaluation criteria and pilot design parameters. Together, these steps would appropriately balance the need for innovation with the need for the Enterprises to support the broader market.

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[10] A 10 percent ownership limitation to prevent undue influence would be comparable to a provision in the Federal Reserve regulations that establishes a rebuttable presumption of control when a person, or persons acting in concert, acquire a 10 percent interest in a state member bank or bank holding company. See 12 C.F.R. 225.419(c).

Uniform MBS

MBA has consistently supported the development of the single-family UMBS and recognizes the many short- and long-term benefits that will come from the transition to the new market structure, including enabling a more efficient, resilient, and liquid secondary market. These positive initial developments do not obviate the need for continued monitoring of liquidity metrics, prepayment rates, and general market activity by FHFA and the Enterprises. The final rule implementing the UMBS, which was issued by FHFA in early 2019, provides strong authorities by which FHFA can monitor alignment of cash flows and other market data points.

**Monitoring and Oversight of Enterprise Counterparties**

Financial Requirements for Enterprise Counterparties

Objective 2.1 of the Strategic Plan includes the sub-objective of establishing standards for sellers, servicers, and counterparties of the Enterprises. MBA generally supports these efforts as we understand the need to ensure Enterprise counterparties have sufficient financial strength. In our comments on revised net worth and liquidity requirements for non-depository servicers of Enterprise single-family mortgages released in January 2020, for example, MBA did not object to a process that strengthens these requirements, though we did note important concerns regarding the procyclicality of the proposal and the lack of recognition for factors that reduce counterparty liquidity risk.[11] As FHFA develops re-proposed standards, MBA urges that it consider standards that require greater liquidity during strong markets and allow for the use of this liquidity during downturns. Capital and liquidity standards also should provide incentives for business practices that reduce aggregate liquidity needs or facilitate access to additional funding.

## III. "CHALLENGES AND RISKS THAT MAY HINDER ACHIEVEMENT OF STRATEGIC GOALS"

Examination Authority over Enterprise Counterparties

Among the "Challenges and Risks that May Hinder Achievement of Strategic Goals" that relate to "The Legislative and Regulatory Environment" cited in the Strategic Plan is the assertion that FHFA lacks the authority to "examine important counterparties of its regulated entities, such as nonbank servicers." FHFA states that such lack of examination authority could interfere with its "ability to ensure the safety and soundness of the regulated entities and the resilience of the nation's mortgage markets." The rationale for this concern is unclear because Congress envisioned FHFA as a prudential

[11] For a more complete description of MBA's observations and recommendations regarding the proposed net worth and liquidity standards, see:
https://www.mba.org/Documents/MBA_FHFA_IMB_Financial_Requirements_April2020.pdf

safety and soundness regulator of the Enterprises (and the Federal Home Loan Banks), not as a marketplace regulator. Direct FHFA examination of non-depository institutions, moreover, largely would be duplicative of the efforts already carried out by primary state regulators, the Enterprises, Ginnie Mae, warehouse lenders, and other counterparties. Additionally, there are no parallel examples of examination authority given to any federal agencies over *customers* of regulated entities. As such, FHFA direct oversight of Enterprise *customers* would be very different than oversight of Enterprise *vendors or service providers* as part of FHFA's prudential supervision program.

FHFA has alluded to the third-party examination authority provided to the federal banking agencies under existing laws, such as the Bank Service Company Act (BSCA).[12] The BSCA, however, would not be an appropriate model for FHFA and its relationship with non-depository servicers. The BSCA focuses its authority on entities that perform services outsourced by banks – *i.e.*, activities that the banks normally would conduct themselves. The Enterprises, however, are not permitted to engage directly in primary market servicing activities, and as such, non-depository servicers do not fall under this construct. Non-depository servicers, furthermore, are not "institution-affiliated parties" to the Enterprises, and do not participate in the affairs of the Enterprises. These are factors that bank regulators are required to consider when exercising examination authority under the BSCA or taking enforcement action against a particular third party. Said differently, non-depository seller/servicers are customers of the Enterprises – not vendors to them.

FHFA's examination authority with respect to the Enterprises is appropriately focused on ensuring their "financial safety and soundness" such that they operate in a manner that is faithful to their Congressional charters and that supports the nation's real estate finance markets. FHFA's existing examination authority with respect to the Enterprises also provides sufficient flexibility and access to address any prudential concerns related to the Enterprises' counterparty relationships. Prudential regulation of the Enterprises should not extend to broad examination authority over all stakeholders and participants in the housing finance ecosystem, including Enterprise customers.

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MBA would like to thank FHFA for the opportunity to comment on the Strategic Plan for Fiscal Years 2021-2024. We believe many of the objectives identified in the Strategic Plan, along with recent reforms to the Enterprises that have been implemented already, are critical prerequisites to preparing the Enterprises to safely and sustainably exit conservatorship at the appropriate time. We look forward to continuing our partnership with FHFA as we work towards permanently implementing the reforms needed to ensure the Enterprises operate with financial strength and appropriate market conduct.

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[12] 12 U.S.C. § 1867.

Sincerely,

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