

December 19, 2019

Mark Calabria
Director
Federal Housing Finance Agency
400 7th St SW
Washington, DC 20219

Dear Director Calabria,

We, the undersigned, are writing to express concerns that the recent announcement by the Federal Housing Finance Agency (“FHFA”) to re-propose the regulatory capital rule for Fannie Mae and Freddie Mac (GSEs) will lead to an unnecessary and costly delay in the GSE recapitalization required by the Housing and Economic Recovery Act of 2008 (“HERA”) to protect taxpayers, mortgage markets and lenders. In particular, delaying the capital rule will slow progress in making critical changes to the Preferred Stock Purchase Agreements (PSPAs) to formally end the sweep of GSE earnings and formalize key reforms that have been put in place during the conservatorship. While we appreciate FHFA’s desire to get the GSE capital rule “right,” we urge the agency to move as quickly as possible towards finalizing the rule and ending the conservatorships.

GSE Capital Rule

We agree that some portions of the previously-issued proposed regulatory capital rule for the GSEs require adjustment, but we are concerned that re-proposing the entire capital rule imperils both FHFA’s and the Administration’s publicly stated goals of executing Congress’ clear intent in the HERA statute in a timely manner.

We commend FHFA’s commitment to following HERA, as stated in its recent strategic goals and annual scorecards for the GSEs. Similarly, we applaud the Treasury Department’s (“Treasury”) housing finance reform recommendations to the White House that would return the GSEs to the private markets in terms of capitalization and function. However, we are concerned that, without urgent action, these commitments will become meaningless and in jeopardy if the capital markets falter or the economy begins to meaningfully slow.

Additionally, if the regulatory capital rule is not final before late May or early June of next year, the consequences of further delay or inaction become particularly acute. Under the Congressional Review Act, the regulatory capital rule – or any rule enacted within the prior 60 legislative days by FHFA – can be overturned if there is a change in leadership in Congress and the White House after the 2020 elections.

Finalizing regulatory capital standards is a prerequisite to the GSEs' submission and FHFA's approval of credible capital restoration plans.¹ These plans are critically important for all GSE stakeholders and will provide the pathway out of conservatorship for the GSEs. As mentioned previously, the longer this process takes the greater the risk of a potential market or political event that could impact the success of any recapitalization effort. Time is truly of the essence, and we urge the FHFA to move as quickly as possible in proposing the GSE capital rule.

Amending the PSPAs

The renegotiation of the Preferred Stock Purchase Agreements, between Treasury and the GSEs, must be completed before the GSEs raise capital from private markets to protect taxpayers, as HERA requires.

As both the conservator and prudential regulator of the GSEs, FHFA has the sole mandate and legal authority to permit and direct the GSEs to access capital markets to retire the Treasury's holdings of equity securities.² Therefore, and in conformance with HERA's directions to the Treasury,³ it is crucial you insist that Treasury write down to zero the liquidation preferences of its senior preferred stock to enable new private investors to participate in the GSEs' capital raise. The GSEs have repaid to Treasury the full amount of principal and dividends, significantly exceeding the 10% rate of return the Government contracted for in the original Preferred Stock Purchase Agreements. Moreover, Treasury will still retain warrants for 80% of the GSEs' common equity. Without a write-down of the liquidation preference, it is impossible to expect private capital to recapitalize the GSEs, and failure by Treasury to take such action in response to a demand by FHFA would violate its own obligation under HERA to help effect the "orderly resumption of private market funding or capital market access".⁴

Small Lender Access, Level Playing Field, and Duty to Serve

As you have correctly stated: *"Now is the time to reform our mortgage finance system because our economy and housing market are strong... Of course, the Enterprises will continue to support access to credit through low down payment lending. Also, they have a Duty to Serve and Affordable Housing Goals to meet – and FHFA expects them to continue meeting those goals. Borrowers and lenders will continue to have choice in the market... Fannie and Freddie's risk must be supported by private capital. Their activities are expected to earn 'a reasonable*

¹ HERA 1313B(b)(1)

² HERA 1142 "the Director may permit a regulated entity, to the extent appropriate or applicable, to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition— "(A) is made in connection with the issuance of additional shares or obligations of the regulated entity in at least an equivalent amount; and (B) will reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the entity."

³ Sec. 1117 – "To protect the taxpayers, the Secretary of the Treasury shall take into consideration the following in connection with exercising the authority contained in this paragraph: (i) The need for preferences or priorities regarding payments to the Government. (ii) Limits on maturity or disposition of obligations or securities to be purchased. (iii) The corporation's plan for the orderly resumption of private market funding or capital market access."

⁴ IBID.

economic return.’ They must be able to withstand an economic downturn and their loans must be sustainable through the cycle.”⁵

To ensure the GSEs are capable of fully and safely serving low-and-moderate-income borrowers and first-time homeowners it is imperative to act swiftly to provide the transparency regarding the capital rules that is necessary to begin the process of attracting critically needed private capital. Such action is going to be necessary if the GSEs are going to exit conservatorship, so it is preferable to provide that clarity now.

Further, to provide a certain and level playing field for lenders of all sizes, in support of your goals, we would also suggest that amendments to the PSPAs provide an opportunity to execute the Administration’s proposal, contained in their “plan,” to make permanent an equitable access provision for smaller lenders including prohibiting the GSEs from offering volume based pricing to lenders. This is currently FHFA policy – but it is important that it survive the GSEs exiting conservatorship and, while we prefer it ultimately be codified in law, in the interim it should be codified by agreement and regulation.

In conclusion, we appreciate your efforts thus far, but strongly urge you to act more swiftly to implement FHFA’s, and the Administration’s, stated goals in regard to the housing market, mortgage market, and the GSEs.

Respectfully,

Independent Community Bankers of America

Community Home Lenders Association

Community Mortgage Lenders of America

Leading Builders of America

Cc:

Hon. Steven Mnuchin
Secretary of Treasury

⁵ Prepared Remarks of Dr. Mark A. Calabria, Director of FHFA at MBA 2019 Annual Convention & Expo
10/28/2019