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February 25, 2022

Sandra Thompson
Acting Director
Federal Housing Finance Agency
400 7th St. SW
10th Floor
Washington, DC 20219

RE: Capital Planning and Stress Capital Buffer Determination

Dear Acting Director Thompson,

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the Federal Housing Finance Agency's (FHFA) notice of proposed rulemaking (NPR) that would require Fannie Mae and Freddie Mac (the Enterprises) to each submit detailed capital plans to FHFA in addition to securing prior approval before making certain capital distributions. Broadly speaking, the NPR seeks to establish a supervisory framework by which FHFA can set minimum standards that ensure the Enterprises develop and implement robust, forward-looking internal capital planning strategies that position them to eventually satisfy the requirements of the Enterprise Regulatory Capital Framework (ERCF). The NPR outlines the mandatory elements of a capital plan submission as well as the expected timeline for submission, resubmission, and the review process.

ICBA applauds FHFA for recognizing that it is crucial that the Enterprises continue to retain earnings and build robust levels of capital in accordance with the ERCF – ensuring safety and

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.

With nearly 50,000 locations nationwide, community banks constitute roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding nearly \$5.9 trillion in assets, over \$4.9 trillion in deposits, and more than \$3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

soundness, protecting taxpayers, and allowing them to fulfill their mission. We are supportive of regulatory actions that help make certain the Enterprises are operating with capital positions that reflect their risk profile. The requirements outlined in the NPR represent a positive step in achieving that goal. However, ICBA has long emphasized that FHFA needs to provide clarity about the future of the Enterprises, particularly regarding any plans to exit conservatorship. We believe that the requirements in the NPR need to specifically address how the Enterprises should operate once they raise prudential levels of capital and how well the capital plans position the organizations if they exit conservatorship.

Background

As mentioned above, the NPR requires the Enterprises to submit annual capital plans to FHFA and provide prior notice for certain capital actions. FHFA also requires the Enterprises to incorporate the stress capital buffer as they formulate their capital plans. FHFA's intention with the NPR is to "(i) establish minimum supervisory standards for such strategies and processes for the Enterprises; (ii) describe how the boards of directors and senior management of the Enterprises should communicate the strategies and processes, including any material changes to FHFA; and (iii) provide FHFA with an opportunity to review the Enterprises' planned capital distributions."²

Each Enterprise will be required to submit a capital plan by May 20 of each calendar year. Among other elements, each plan must provide a qualitative and quantitative assessment of the Enterprise's capital policy; expected sources and uses of capital; estimated expenses, revenues, costs, capital actions, and regulatory capital ratios under expected and stressful economic conditions; and plans to address the results of any mandatory stress testing. The NPR also incorporates the stress capital buffer from the ERCF into the capital planning process. The Enterprises must therefore account for this in their capital plans, using a floor of 0.75 percent of adjusted total assets.

²https://www.fhfa.gov/SupervisionRegulation/Rules/RuleDocuments/Enterprise%20Capital%20Planning%20NPR%2012-15-21%20to%20Fed%20Reg_Website.pdf, p. 5.

All these elements must be provided with a planning horizon of at least nine consecutive quarters for FHFA scenarios, which is consistent with Dodd-Frank Act stress testing (DFAST), and at least five years for internal scenarios, which FHFA argues is a more appropriate horizon to allow the Enterprises to rebuild capital as required by the ERCF.

ICBA Comments

ICBA supports regulatory efforts to ensure the long-term safety and soundness of the Enterprises. This proposal is a positive step in that direction and supplements existing regulatory requirements to comply with the ERCF. However, it is unfortunate that the NPR neglects to meaningfully address the fact that while in conservatorship the U.S. Government has controlling interest in the Enterprises by virtue of the Senior Preferred Stock Purchase Agreements (PSPAs) which give 79.9% ownership to the U.S. Treasury. Currently, Treasury's ownership stake in the Enterprises is approximately \$200 billion and continues to grow as the Enterprises rebuild their equity capital. Without resolving the PSPAs, the ERCF and the Enterprise capital plans are not enough to address the concerns regarding a permanent conservatorship of the Enterprises.

The NPR states that its proposals are "intended to provide a stable regulatory framework for the Enterprises for an extended period, including after they achieve adequate capitalization under the ERCF."³ It appears that FHFA's regulatory vision does not account for the possibility of an exit from conservatorship, even after the Enterprises are capitalized according to the ERCF. ICBA finds this troubling for several reasons. A perpetual conservatorship could have unintended, negative consequences for the housing market and broader economy. Despite being well capitalized, taxpayers will ultimately remain on the hook during an inevitable downturn. Moreover, the fact that FHFA's director is likely to be replaced with every new incoming Administration creates inherent regulatory instability and amplifies the politicization of new and existing Enterprise activities.

³ Ibid, p. 7.

ICBA urges FHFA to help the Enterprises prepare for an eventual exit from conservatorship by requiring them to provide some data-driven analysis and report on how exiting conservatorship might affect their long-term internal capital plans. Additionally, we strongly encourage FHFA to engage with Treasury to resolve the liquidation preference, modify the PSPAs accordingly, and work with the Enterprises to develop a realistic timeline with specific benchmarks and milestones that must be met for the Enterprises to be released from conservatorship. Achieving this, along with robust capital levels and detailed capital plans, will help better ensure stability of the Enterprises and the safety and soundness of the housing finance system.

Sincerely,

Tim Roy
AVP – Housing Finance Policy

The Nation's Voice for Community Banks.[®]

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