April 6, 2021

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

The Honorable Mark A. Calabria
Director
Federal Housing Finance Agency
400 7th St, SW
Washington, DC 20024

Dear Secretary Yellen and Director Calabria,

We are writing to express concerns about the various product and program constraints contained in recent FHFA-Treasury amendments to the Preferred Stock Purchase Agreements (PSPAs) for Fannie Mae and Freddie Mac (the Enterprises). The amendments were made without any notice and without any publicly disclosed data analysis or explanation about the impact of these new constraints and the interpretive guidance associated with them. There is little question these changes will not only alter the role and obligations of Fannie Mae and Freddie Mac but will also have significant impacts on borrowers, lenders, servicers, and affordability. Some of the proposed limits on single family acquisitions will have a disproportionate impact on borrowers of color as well. [1]

This letter is also intended to underscore that a wide and diverse spectrum of stakeholders have significant concerns that the PSPA amendments are the latest in a number of meaningful regulatory decisions made without appropriate transparency or guidance. These changes will adversely affect pricing, loan product development, affordable housing, and other Enterprise activities which are expected to facilitate affordable homeownership for borrowers and fair and equal access to the secondary market that enable lenders to serve their customers. Elements of the PSPAs will constrain future liquidity in the mortgage market and will undercut access to mortgage credit for low- and moderate-income (LMI) borrowers and for borrowers of color.

<u>Treasury and FHFA should delay implementation of the PSPA's product and program restrictions</u>

We strongly encourage both Treasury and FHFA to delay the implementation of the product and program provisions of the PSPAs and conduct a broader impact analysis to determine to

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[1] *The Preferred Stock Purchase Agreements Will Hamper Access to Credit*, Urban Institute (February 2021). While publicly available Home Mortgage Disclosure Act (HMDA) data is limited in the PSPA limit on high risk mortgages, the Urban analysis finds" "…that for GSE purchase mortgages made in 2019, more than twice the share of Black and Hispanic borrowers versus white borrowers (8.75 percent versus 4.07 percent) would be considered high risk, as determined by FICO scores and LTV ratios only" making it more difficult to expand the credit box to incorporate more Black and Hispanic borrowers and further reducing the already low share of Black and Hispanic borrowers who use GSE mortgages.

what extent these recent amendments alter the Enterprises' critical role in the housing finance system. Moreover, FHFA and Treasury must retract the amendments that set arbitrary and inflexible limits on the Enterprises' acquisitions and cash window. Using the PSPAs as a vehicle to impose these limits is inappropriate and will likely undermine the economic recovery by restricting liquidity, undermining the Enterprises' affordable housing obligations, and disrupting the housing market.

The limits on use of the cash window will impact smaller lenders

The PSPAs impose a series of volume limits on what lenders can sell to the Enterprises for cash as well as limits on the volume and type of mortgages that the Enterprises can purchase. One of the material limitations is the $1.5 billion cap on a lender's sales to each Enterprise during any four calendar quarters. This cap is too low and will likely force those smaller lenders who exceed that cap to enter into the highly complex mortgage-backed securities (MBS) swaps market or sell to larger aggregators rather than directly to the Enterprises. The change to the MBS swaps market would require meaningful increases in time and capital investment for these firms to achieve the requisite organizational capabilities to compete against the larger entities.[2]

The purchase limits on single-family loans will further undermine access to credit

Recent disclosures by both Enterprises in the 2020 Annual Reports 10-Ks highlight the extent to which the new mortgage product covenants will constrain the Enterprises' business, operations, and affordable housing activities. Based on FHFA's interpretive guidance and an initial assessment of their purchase activities, Fannie Mae indicated that the company is "not currently in compliance" with new covenants that restrict purchases of single-family loans with higher risk characteristics, or loans backed by investment properties and second homes as "measured during the preceding 52-week period".[3] Presumably, Fannie Mae will have to shrink their business operations in order to comply with the new constraints. In addition to the limits on higher risk loans disproportionately affecting borrowers of color, Freddie Mac has also disclosed that "risk appetite constraints" may make it difficult for the company to meet their affordable housing goals in the future.[4]

The new covenants will exacerbate affordability and access challenges. There is already a shortage of housing supply in the market, which has put upward pressure on home prices, further limiting affordability. This means that more borrowers may have higher loan-to-value

[2] *Treasury Department and FHFA Amend Terms of Preferred Stock Purchase Agreements for Fannie Mae and Freddie Mac*, January 14, 2021. The terms define which single family mortgages are eligible for purchase and also contains new business restrictions, including: an $80 billion limit on multifamily mortgage assets in any 52-week period; a $1.5 billion limit on single family loans for cash consideration from any single seller (including affiliates) during any four calendar quarters; not more than 3 percent of refinance acquisitions or 6 percent of single family acquisitions in any 52-week period can have two or more of the following: exceed a 90 percent loan-to-value ratio; exceed a 45 percent debt-to-income ratio; or have a credit score below 680; and not more that 7 percent of single family mortgages can be for investment properties or second homes.

[3] Fannie Mae 10-K 2020, p. 19

[4] Freddie Mac 10-K 2020, p. 169.

ratios and debt-to-income ratios but are nonetheless creditworthy. Many community lenders want to help borrowers in this situation. The changes to the PSPAs therefore only add to current market challenges to housing affordability. Moreover, both HUD and FHFA have noted that the uncertainty caused by the COVID-19 pandemic drove many mortgage market participants to tighten their credit terms. Even with overall credit availability picking up in three of the last four months, credit supply is still at its tightest level since 2014.[5] The PSPAs create extraordinary and unexpected uncertainty in the secondary market and exacerbate already tightening mortgage credit.

Hard purchase limits will create constraints across the housing market

Lenders who have underwritten mortgages in accordance with the Enterprises' seller guides may not be able to deliver those loans because of the PSPAs' restrictions on loan features and volumes, including on loans that can be delivered for cash. These delivery sticking points may occur unexpectedly at any point during a 52-week window as the Enterprises manage loan delivery flows as well as FHFA interpretations around these restrictions. As with any limit, the Enterprises will have to manage these acquisition limits with a cushion, and at least one report has found that the cushion on higher-risk mortgages could be between a quarter and nearly a half of the purchase limits.[6]

Because of the substantial role the Enterprises play in the conventional mortgage market and in promoting affordable housing, these impacts will have dire consequences. More home buyers have been relying on the conventional mortgage market, with conventional mortgages making up a growing share of home purchases.[7] In 2018 alone, Fannie and Freddie collectively funded more than a half million single-family purchase loans and more than 800,000 multifamily units that made these homes and apartments affordable to families with incomes of less than 80 percent of local area median income.[8] Together, the Enterprises provide approximately 40 percent of loans targeted towards low- and very low-income borrowers, supporting other public, and private programs.[9]

Recently, key policy measures at the Enterprises and across federally-backed loan programs have been focused on facilitating loss mitigation options and homeownership preservation in response to the pandemic. These measures have been substantial and critical for LMI households and households of color that have been disproportionately impacted by the COVID-19 pandemic. However, the PSPA constraints could set back an equitable recovery. For example, given the critical role that internally generated cross-subsidies play in supporting the Enterprises' housing mission, the PSPAs' limit on investor loans could also

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[5] Mortgage Credit Availability Index. MBA, February 2021.

[6] Id. at note 1. (Urban Institute)

[7] Mortgage Analysis Update, American Bankers Association, public comment letter to FHFA on the Enterprise Housing Goals, February 2021.

[8] Cooperstein, Richard and Stegman, Michael. A Missing Piece of the Administrative Reform Puzzle: How the GSEs Generate Cross-Subsidies, Joint Center for Housing Studies of Harvard University (JCHS)(October 2019).

[9] Fannie Mae comment letter to the FHFA on the Enterprise capital requirements

reduce a source of funding for the Enterprises' affordable housing activities.[10]

<u>The agencies must provide an impact analysis of the PSPA product and program restrictions</u>

The PSPA constraints represent a fundamental change to the functioning of the nation's secondary mortgage market and it is clear that these changes were designed to shrink the Enterprises' business going forward. Yet neither FHFA nor Treasury have provided data or analysis that address the impact of these changes on the Enterprises or key stakeholders. The PSPA amendments also interact with other policy changes that typically undergo a public notice and comment period – critical issues related to cash window access for smaller lenders and reasonable access to mortgage credit are examples.

It is crucial to understand whether and to what extent the amendments, which are de facto regulatory changes affecting all stakeholders, are impacting the ability of the Enterprises to meet the mission in their charter, their affordable housing obligations and housing goals that reflect each of the statutory considerations in 12 U.S.C. 4562(e)(2)(B). Additionally, there must be confidence that the agencies' conservatorship policies have struck an appropriate balance between maintaining a sound financial condition and facilitating mortgage market liquidity and access in underserved markets. The report should also make public any fair housing and fair lending analysis of the PSPA amendments that either agency has completed.

Conclusion

We the undersigned are concerned that aspects of the PSPAs, outlined above, affect all industry stakeholders, and were decided without due consideration of their impacts and without transparency. We therefore ask that FHFA and Treasury delay the implementation dates of these changes immediately and jointly meet with key stakeholders in order to effectuate a written and quantitative explanation for the changes and to generate a rigorous analysis of the potential impacts of these new covenants and their impacts on mortgage market liquidity, LMI borrowers and borrowers of color going forward. The PSPA amendments should be reopened and the arbitrary and inflexible limits on the Enterprises' products and programs be removed.

We would be happy to discuss these recommendations with you at length.

Best regards,

Community Home Lenders Association

The Leadership Conference on Civil and Human Rights

[10] According to one estimate, investor loans generate a net of more than $5.7 billion in overcharges relative to modeled credit losses, generating a significant amount of the surpluses used to subsidize the Enterprises affordable housing activities. Id. at 8. (JCHS)

Independent Community Bankers of America

National Association of Federally-Insured Credit Unions

National Community Reinvestment Coalition

The Community Mortgage Lenders of America

America's Homeowner Alliance

cc:
The Honorable Susan Rice
Assistant to the President for Domestic Policy

The Honorable Maxine Waters, Chair
U.S. House Financial Services Committee

The Honorable Patrick McHenry, Ranking Members
U.S. House Financial Services Committee

The Honorable Sherrod Brown, Chair
U.S. Senate Banking Committee

The Honorable Patrick J. Toomey
U.S. Senate Banking Committee