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MORTGAGE BANKERS ASSOCIATION

December 2, 2024

Mr. Clinton Jones  
General Counsel  
Federal Housing Finance Agency  
400 7th Street, SW  
Washington, DC 20219

**RE: Second Proposed Rule to Amend the Suspended Counterparty Program  
[RIN 2590-AB23]**

Dear Mr. Clinton Jones:

The Mortgage Bankers Association<sup>1</sup> (MBA) appreciates the opportunity to offer comments on the Federal Housing Finance Agency's (FHFA) second proposed rule to amend the existing Suspended Counterparty Program (SCP). The re-proposal follows the July 2023 proposal which would have significantly expanded the SCP and exposed GSE-approved lenders and servicers to the threat of a draconian penalty – suspension of their seller/servicer status – for minor civil/administrative sanctions or misconduct.

The re-proposal would now only authorize the suspension of business between a regulated entity and a counterparty whose misconduct resulted in a federal prohibition order, or a civil money penalty order issued by specific Federal agencies of at least \$1 million. Additionally, the re-proposal would authorize the suspension of business between a regulated entity and a counterparty that has committed criminal or civil misconduct related to the management or ownership of real property.

We commend FHFA's thorough review of the initial comments, its engagement with the commenters, and its conclusion that a more narrowly tailored proposal is warranted.<sup>2</sup> Accordingly, with one recommendation regarding the definition of "covered misconduct,"

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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 275,000 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 2,000 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, 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> Mortgage Bankers Association, MBA Statement on FHFA's Suspended Counterparty Program Re-Proposal (Sept. 25, 2024), available [here](#).

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MBA supports FHFA moving forward with the second proposed rule. The re-proposal addresses several of MBA's concerns highlighted in a joint comment letter<sup>3</sup> by distinguishing between misconduct that poses material risk to the safety and soundness of Fannie Mae and Freddie Mac from behavior with less severe impact. We are particularly pleased that FHFA did not move forward with the immediate suspension option and instead retained the current proposed suspension process thus reducing any due process concerns.

Overall, MBA appreciates FHFA's thoughtful approach. The re-proposal appears to achieve FHFA's goal of ensuring safety and soundness of the GSEs and insulating FHFA regulated entities from the risks posed by bad actors without unnecessarily penalizing counterparties for relatively low-level civil or contractual transgressions. However, we believe a minor revision to the definition of "covered misconduct" is needed to further ensure that counterparties are not penalized for routine certifications. Accordingly, we suggest that the words "knowingly or recklessly" be inserted before "making false statements or claims."

Thank you for your responsiveness to our previous comments. Should you have questions or wish to discuss these issues further, please contact Justin Wiseman at [jwiseman@mba.org](mailto:jwiseman@mba.org) or Alisha Sears at [asears@mba.org](mailto:asears@mba.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Mills", enclosed in a thin black rectangular border.

Pete Mills  
Senior Vice President  
Residential Policy and Strategic Industry Engagement  
Mortgage Bankers Association

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<sup>3</sup> Mortgage Bankers Association, Re: Suspended Counterparty Program – Notice of Proposed Rulemaking (Sept. 18, 2023), available [here](#).