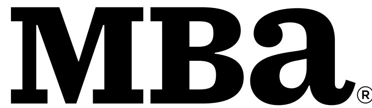

MORTGAGE BANKERS ASSOCIATION

March 11, 2022

Sandra L. Thompson
Acting Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20219

RE: FHFA Strategic Plan: Fiscal Years 2022-2026

Dear Acting Director Thompson:

The Mortgage Bankers Association (MBA)[1] thanks the Federal Housing Finance Agency (FHFA) for the opportunity to comment on the recently released draft Strategic Plan for Fiscal Years 2022-2026 (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 FHFA Strategic Plan for Fiscal Years 2021-2024[3] and the 2022 Scorecard for Fannie Mae, Freddie Mac (the Enterprises), and Common Securitization Solutions.[4]

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

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 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 2,100 companies includes all elements of real estate finance: independent mortgage banks, commercial banks, mortgage brokers, 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.

[2] Federal Housing Finance Agency, "FHFA Strategic Plan: Fiscal Years 2022-2026," February 9, 2022. Available at: https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA_StrategicPlan_2022-2026.pdf.

[3] Federal Housing Finance Agency, "FHFA Strategic Plan: Fiscal Years 2021-2024," October 27, 2020. Available at: https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA_StrategicPlan_2021-2024_Final.pdf.

[4] Federal Housing Finance Agency, "2022 Scorecard for Fannie Mae, Freddie Mac, and Common Securitization Solutions," November 17, 2021. Available at: https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2022-Scorecard.pdf.

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- Secure the regulated entities' safety and soundness;
- Foster housing finance markets that promote equitable access to affordable and sustainable housing; and
- Responsibly steward FHFA's infrastructure.

Much of the content of the Strategic Plan supports the ongoing efforts of FHFA to ensure the regulated entities meet their statutory missions in a manner that promotes safe and sound operations. This is promising on several fronts – particularly with respect to administrative steps to "lock in" reforms to the Enterprises that have been made during their conservatorships, as well as to encourage sustainable homeownership and affordable rental housing across communities, geographies, and income levels.

These efforts will complement the many positive steps FHFA has taken in recent months, including the elimination of the Adverse Market Refinance Fee, suspension of problematic loan delivery thresholds for certain product types sold to the Enterprises, expansion of Flex Modification eligibility, increased capability for the Enterprises to consider rental payment history for single-family borrowers, an improved Enterprise regulatory capital framework, greater availability of appraisal flexibilities, and broad advancement of both fair housing and equitable access to housing.

The Strategic Plan also highlights several issues for which MBA has provided recommendations and, in some cases, voiced significant concerns. Chief among these concerns is FHFA's pursuit of direct examination authority with respect to non-depository Enterprise seller/servicers, as this authority would fundamentally alter FHFA's role as an institution and would confer powers that are not aligned with those of other federal financial regulators. Other concerns include those related to ensuring a level playing field for all origination channels, a problematic provision in the Senior Preferred Stock Purchase Agreements (PSPAs) impacting the Enterprises' regulatory capital framework, and challenges with certain COVID-19-related policies.

Effectively executing the goals and objectives outlined in the Strategic Plan is critical to maintaining a housing finance system that facilitates broad access to credit for qualified borrowers, promoting competitive markets, protecting taxpayers, and adequately preparing the regulated entities for changes in market dynamics. With respect to the Enterprises, MBA firmly believes they 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 MBA offers the following comments on the Strategic Plan.

OBJECTIVE 1.1: IDENTIFY RISKS TO THE REGULATED ENTITIES AND ASSESS THE SAFETY AND SOUNDNESS OF REGULATED ENTITY OPERATIONS

Financial Requirements for Enterprise Counterparties

Objective 1.1 of the Strategic Plan includes the sub-objective of establishing and maintaining standards for sellers, servicers, and counterparties of the Enterprises. MBA understands the need to ensure that those who engage in business with the Enterprises have sufficient financial strength to carry out their commitments.

In prior comments to FHFA, MBA did not object to a process that strengthens these requirements for seller/servicers, though we did note important concerns regarding the procyclicality of certain liquidity requirements and the lack of recognition of factors that reduce counterparty liquidity risk.[5] MBA therefore was pleased to see the updated proposal put forth by FHFA address several of these concerns.[6] The removal of a problematic non-performing loan threshold and surcharge should reduce procyclicality, while the recognition of the differing liquidity risks associated with actual and scheduled servicing remittances should better align liquidity requirements with advancing obligations.

MBA will undertake more thorough analysis of this updated proposal, examine new elements that could introduce unintended consequences (such as the origination pipeline hedging surcharge), and provide more detailed comments before the deadline for responses to FHFA.

OBJECTIVE 1.3: PRESERVE AND CONSERVE ENTERPRISE ASSETS WHILE MANAGING THE CONSERVATORSHIPS

Capital Framework and Credit Risk Transfer

MBA has consistently supported the development of a strengthened capital framework for the Enterprises and agrees that appropriate levels of capital are key to taxpayer protection, the safety and soundness of the Enterprises, and the eventual release of the Enterprises from conservatorship at the appropriate time. When the current capital framework was proposed, MBA identified significant concerns, including the frequency with which the leverage ratio requirements would serve as the binding capital constraint on the Enterprises and the punitive treatment of credit risk transfer (CRT) mechanisms

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[5] MBA, "Industry Views on Updated Eligibility Requirements for Enterprise Single-Family Seller/Servicers," April 30, 2020. Available at: https://www.mba.org/Documents/MBA_FHFA_IMB_Financial_Requirements_April2020.pdf.

[6] Federal Housing Finance Agency, "Re-Proposal to Enhance Eligibility Requirements for Enterprise Single-Family Seller/Servicers," February 24, 2022. Available at: https://www.fhfa.gov/Media/PublicAffairs/Documents/SE2-Proposal-FAQ.pdf.

that would discourage the Enterprises from transferring credit risk to private investors in a meaningful manner.

MBA therefore welcomes FHFA's efforts to address these concerns through targeted amendments to the Enterprises' regulatory capital framework. The recently finalized changes to the capital rule should encourage the Enterprises to operate as prudent managers and distributors of mortgage credit risk while promoting both safety and soundness and broad access to sustainable credit for borrowers.

MBA encourages FHFA to evaluate the Enterprises' regulatory capital framework continually and make additional amendments where appropriate. MBA has significant remaining concerns, for example, regarding capital requirements that vary based on origination channel. Third-party originations require a higher level of capital compared to retail originations, even if the loans have identical characteristics in all other respects. This dynamic leads to unintended and inappropriate pricing distortions, as is discussed in greater detail below.

MBA also continues to see the need for a multifamily countercyclical adjustment in the capital framework and recommends FHFA consider an approach that mitigates procyclicality while realigning the Enterprises' capital framework with FHFA's stated intentions of (a) defining stresses in terms of peak-to-trough declines while (b) leaving judgment as to whether the market is over- or under-valued as the purview of the Countercyclical Capital Buffer.[7] We appreciate that FHFA has determined that this topic requires further consideration and may warrant a future rulemaking.[8]

Lastly, MBA strongly urges FHFA to remove the PSPA provision that requires the Enterprises to comply with a point-in-time regulatory capital framework that disregards any subsequent amendments or modifications to the rule establishing this framework. It is entirely unclear why the PSPAs would require the Enterprises to adhere to what now is an outdated capital framework. While MBA greatly appreciates the steps taken by FHFA to amend the PSPAs to suspend the problematic delivery and cash window limits,[9] we believe this additional PSPA amendment is critical, particularly in light of the recent changes to the Enterprises' regulatory capital framework. Without any changes to this provision, the problematic nature of the binding leverage ratio and the punitive CRT

[7] See MBA comments on Enterprise Regulatory Capital Framework Rule – Prescribed Leverage Buffer Amount and Credit Risk Transfer (Nov. 23, 2021) and DUS Advisory Council comments on FHFA Proposed Rule on Enterprise Regulatory Capital Framework (Aug. 31, 2020).

[8] Federal Housing Finance Agency, "Enterprise Regulatory Capital Framework– Prescribed Leverage Buffer Amount and Credit Risk Transfer," February 25, 2022. Available at: https://www.fhfa.gov/SupervisionRegulation/Rules/RuleDocuments/Entrerprise%20Capital%20PLBA%20CRT%20Amendments%20Final%20Rule%20for%20Web.pdf.

[9] MBA believes the currently suspended portions of the PSPAs related to delivery and cash window limits should be permanently removed, along with the point-in-time regulatory capital provision, as part of any future PSPA revisions.

treatment would continue to serve as constraints on the Enterprises' operations. FHFA and the Treasury Department therefore should prioritize the suspension or removal of the point-in-time capital framework from the PSPAs.

Updates to the Enterprises' Pricing Framework

In recent months, FHFA has indicated that a comprehensive review of the Enterprises' existing pricing framework is underway, and MBA was pleased to see this initiative listed officially under Objective 1.3 of the Strategic Plan. MBA agrees that there is a need for recalibration of fees to improve access to credit for historically underserved borrowers. Such a recalibration is particularly warranted following recent fee increases for certain high balance loans and second home loans. Balancing these fees to better support "core mission borrowers," as is noted in the Strategic Plan, can be done in a number of ways, including, but not limited to, targeting certain housing types such as manufactured housing or condominiums or compressing the pricing grids across loan-to-value ratio and credit score dimensions in a targeted fashion.

While conducting this pricing review, MBA encourages FHFA to continue to facilitate access to the secondary market on equal terms for lenders of all sizes and business models. As expressed above, MBA has significant concerns surrounding variations in pricing for loans with substantially similar credit characteristics based on origination channel, such as pricing penalties for third-party originations. We understand this disparity in pricing stems from the higher risk multiplier for those loans in the Enterprises' regulatory capital framework. The Enterprises are likely to have an outsized and unintended impact on primary market dynamics, however, by altering pricing for loans simply due to the channel through which the loans are originated. Variation in capital requirements – and, by extension, in Enterprise pricing – based on origination channel serves to favor certain business models over others in a manner that violates the Enterprises' responsibility to ensure a level playing field. FHFA should remove this provision from the Enterprises' capital framework and take steps to ensure there are no incentives for the Enterprises to use origination channel as a differentiator in pricing.

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.

MBA supports the review of the existing pricing framework and remains confident that FHFA will determine appropriate pricing levels that enhance support for mission-focused lending. As always, safety and soundness remain paramount, and any changes to pricing should not introduce excessive risk to the Enterprises.

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 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.

OBJECTIVE 1.4: IDENTIFY OPTIONS FOR INCORPORATING CLIMATE CHANGE INTO REGULATED ENTITY GOVERNANCE

Climate Change Risk Management

FHFA's heightened attention to the risks and effects of climate change is timely and appropriate, as the frequency and severity of hurricanes, flooding, and wildfires have increased in recent years – a trend that many climate models predict will continue.

MBA and its members are focused on the potential for direct losses from climate change and any associated natural disasters; shifting operational requirements for individual firms and the broader industry; potential transitions for existing businesses and markets to adapt to new consumer, investor, or counterparty preferences or expectations; and potential changes to regulatory requirements that would impact real estate and real estate finance markets.

Supervision of FHFA's regulated entities should focus on reducing externalities that are a product of under-insured risks. In response to a 2021 Request for Input from FHFA,[10]

[10] Federal Housing Finance Agency, "Request for Input: Climate and Natural Disaster Risk Management at the Regulated Entities," January 19, 2021. Available at: https://www.fhfa.gov/Media/PublicAffairs/Documents/Climate-and-Natural-Disaster-RFI.pdf.

MBA developed a set of core principles on which FHFA should align its actions on climate change and natural disaster risks:[11]

1) Recognize FHFA's specific role with respect to climate change and natural disaster policy responses, consistent with FHFA's statutory mission and authorities.
2) Leverage existing FHFA supervisory processes and practices.
3) Leverage the regulated entities' existing risk-management systems, processes, and governance.
4) Employ a principles-based rather than a prescriptive approach, leaving room for flexibility, tailoring, and innovation.
5) Leverage and harmonize FHFA's approach to climate change and natural disaster risk with the actions of other financial institution supervisors.
6) Establish national standards for the regulated entities' climate-related mortgage risks to avoid inconsistent regulation at the state level.
7) Be mindful of any conflicts or tradeoffs between the regulated entities' need to manage climate change and natural disaster risks and to fulfill their charter mandates.

The themes highlighted in these principles center on use of the existing toolkits at FHFA and the regulated entities, the need for a flexible approach to accommodate new information or modeling, and the importance of harmonized policy across markets and regulators.

While climate change certainly presents risks to financial institutions, including the regulated entities, these risks can be managed most effectively in the context of the risk categories already analyzed by FHFA and the regulated entities (*e.g.,* credit risk, liquidity risk, and operational risk, among others). Said differently, climate change is a financial risk driver that may manifest itself in its impact on established areas of risk. Such an approach is consistent with that of depository institution regulators, as described in a recent report on climate-related financial risk published by the Financial Stability Oversight Council.[12]

While risks attributable to climate change are growing more acute and are subject to increased attention and analysis, the collective understanding of these risks remains in its relative infancy. Regulators and financial institutions are still developing approaches to better identify, measure, monitor, and manage both physical and transition risks. A

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[11] MBA, "Response to FHFA Request for Input on Climate and Natural Disaster Risk Management," April 19, 2021. Available at: https://www.mba.org/Documents/Response%20to%20FHFA%E2%80%99s%20Climate%20and%20Natural%20Disaster%20Risk%20Management%20RFI-April%202021.pdf.

[12] Financial Stability Oversight Council, "Report on Climate-Related Financial Risk," October 21, 2021. Available at: https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf.

principles-based approach, therefore, is preferable to a more prescriptive approach. Under a principles-based approach, the regulated entities can more easily incorporate new information that is derived from these efforts. This contrasts to a prescriptive approach that may quickly become outdated or ill-equipped for the needs of the Enterprises or the Federal Home Loan Banks (FHLBs).

Finally, FHFA should align its approach with those of other federal and state regulators whenever possible, while recognizing the unique business models of its regulated entities. Coordination among regulators generally is appropriate to ensure similar treatment of similar risks, and it is even more important in the context of climate change risks due to the evolving nature of the analytics available to manage these risks. FHFA can lend its expertise and data to other regulators while also leveraging the expertise and data of others. This approach should lead to better risk management frameworks that encourage consistency throughout the market.

OBJECTIVE 2.1: PROMOTE SUSTAINABLE ACCESS TO MORTGAGE CREDIT

Sustainable and Equitable Access to Mortgage Credit

MBA welcomes the focus of the Strategic Plan on equitable access to sustainable mortgage credit facilitated by the regulated entities. It is vitally important that mortgage credit be delivered in an equitable manner to support homeownership and wealth building across all communities and geographies, while also ensuring that homeownership is delivered on sustainable terms that foster long-term homeownership and the wealth building that follows.

Many recent actions taken by FHFA and the regulated entities have been steps in the right direction. The requirement that the Enterprises submit Equitable Housing Finance Plans,[13] for example, will provide a roadmap for the Enterprises to advance equity in the course of their housing finance activities, while also providing FHFA and public stakeholders with an opportunity to hold the Enterprises accountable for doing so. We look forward to the release of these plans and collaboration between the Enterprises and industry stakeholders to meet their objectives. MBA also broadly supports the revised Enterprise housing goals that were finalized late last year.[14] In the single-family market, the low-income and very low-income goals were set in a manner that should challenge the Enterprises while remaining attainable, and the new area-based subgoals should

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[13] Federal Housing Finance Agency, "FHFA Announces Equitable Housing Finance Plans for Fannie Mae and Freddie Mac," September 7, 2021. Available at: https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Equitable-Housing-Finance-Plans-for-Fannie-Mae-and-Freddie-Mac.aspx.

[14] Federal Housing Finance Agency, "2022-2024 Single-Family and 2022 Multifamily Enterprise Housing Goals," 86 FR 73641, December 28, 2021. Available at: https://www.federalregister.gov/documents/2021/12/28/2021-28168/2022-2024-single-family-and-2022-multifamily-enterprise-housing-goals.

place specific focus on the Enterprises serving low-income households in minority census tracts. MBA supports robust Duty to Serve programs at the Enterprises, as well, and took note of FHFA's recent decision that neither Enterprise's 2022-2024 proposed plan met its non-objection standard.[15] A critical eye toward these efforts is welcome, and FHFA should ensure robust efforts by the Enterprises to support each of the three underserved markets.

Another avenue by which FHFA and the Enterprises could foster sustainable and equitable access to mortgage credit is through more widespread use of Special Purpose Credit Programs (SPCPs). SPCPs represent intentional efforts by for-profit or not-for-profit organizations to facilitate credit availability for members of underserved communities – those who might not otherwise be able to obtain credit or could obtain it only on less advantageous terms. MBA was pleased to see the Department of Housing and Urban Development affirm that SPCPs instituted in conformity with the Equal Credit Opportunity Act generally do not violate the Fair Housing Act,[16] as well as a subsequent FHFA statement in support of SPCPs.[17] In order for SPCPs to achieve the scale needed to fulfill their potential, it will be critical that the Enterprises support them. Lenders will need clarity that loans originated under SPCPs are salable to the Enterprises at standard terms and pricing – and without increased repurchase and legal risk. The Enterprises therefore should issue clear guidance that such loans are not subject to increased Representations and Warranties (R&W) risk or scrutiny solely due to their SPCP status, as well as guidance regarding the process for lenders to obtain Enterprise feedback on SPCPs they have designed or to participate in SPCPs designed by an Enterprise. Together, these steps should provide the necessary certainty for lenders to more fully embrace SPCPs.

FHFA and the Enterprises also should explore sensible expansions of eligibility for particular products that address housing affordability for underserved borrowers. One example is the existing income threshold on the Fannie Mae HomeReady and Freddie Mac Home Possible offerings. Under current guidelines, eligible borrowers cannot have

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[15] Federal Housing Finance Agency, "Duty to Serve Program." Available at: https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Duty-to-Serve.aspx.

[16] U.S. Department of Housing and Urban Development, Office of General Counsel, "Office of General Counsel Guidance on the Fair Housing Act's Treatment of Certain Special Purpose Credit Programs That Are Designed and Implemented in Compliance with the Equal Credit Opportunity Act and Regulation B," December 6, 2021. Available at: https://www.hud.gov/sites/dfiles/GC/documents/Special_Purpose_Credit_Program_OGC_guidance_12-6-2021.pdf.

[17] Federal Housing Finance Agency, "FHFA Acting Director Sandra L. Thompson's Statement on Special Purpose Credit Programs as a Remedy for Disparities in Access to Homeownership," December 20, 2021. Available at: https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Acting-Director-Sandra-L-Thompsons-Statement-on-Special-Purpose-Credit-Programs-as-a-Remedy-for-Disparties-in-Access-to-Homeownership.aspx.

incomes above 80 percent of the Area Median Income.[18] An increase in this threshold has the potential to better serve moderate-income minority borrowers, for example, who have the means to meet their monthly mortgage obligations but may lack family resources or wealth to assist with a larger down payment. FHFA and the Enterprises should continue to evaluate existing offerings for opportunities such as this to responsibly advance sustainable mortgage credit.

There may also be opportunities to expand access to mortgage credit responsibly for underserved borrowers by determining Enterprise pricing through updated credit score calculations. Much as the Enterprises have converted to the use of the average median credit score for eligibility purposes, they should use the same methodology when calculating pricing. By doing so, they could safely reduce the cost of homeownership and be more consistent in their treatment of borrower credit scores.

As was discussed in greater detail above, FHFA and the Enterprises also should promote access to sustainable mortgage credit for underserved borrowers through targeted adjustments to the Enterprises' pricing framework. The lowering or re-calibration of certain fees could better position certain categories of borrowers to achieve homeownership without sacrificing the Enterprises' safety and soundness.

Federal Home Loan Bank Membership

In its role as regulator of the FHLBs, FHFA should re-visit prior Agency actions that have unduly limited the role of the FHLB System in providing liquidity to support housing finance and community investment.

MBA has long supported the responsible expansion of FHLB membership eligibility to better reflect the diverse providers of single-family and multifamily housing finance throughout the country. Any such expansion should be undertaken in a manner that promotes safety and soundness through appropriate risk management practices and counterparty oversight.

Specifically, MBA recommends that FHFA amend its 2016 rulemaking[19] with respect to FHLB membership eligibility to revise the definition of eligible insurance companies, while also developing a comprehensive framework to set the minimum requirements for eligible captive insurers. These amendments to the existing regulations would provide a clear

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[18] Fannie Mae, "HomeReady Mortgage Product Matrix." Available at: https://singlefamily.fanniemae.com/media/8341/display. Freddie Mac, "Home Possible Mortgage Features." Available at: https://sf.freddiemac.com/working-with-us/origination-underwriting/mortgage-products/home-possible.

[19] Federal Housing Finance Agency, "Members of Federal Home Loan Banks," 81 FR 3245, January 20, 2016. Available at: https://www.federalregister.gov/documents/2016/01/20/2016-00761/members-of-federal-home-loan-banks.

path to FHLB membership for captive insurers that are affiliated with well-managed, financially stable institutions that are primarily engaged in housing finance.[20]

The development of a membership eligibility framework for captive insurers would carry numerous benefits for the FHLBs and the broader housing finance system. Such a framework, if implemented effectively, would ensure that FHLB advances are only available to institutions that are aligned with the mission of the FHLB System. It would also create a more level regulatory construct by reducing disparities based on institutions' charters. Indeed, rather than open a "back door" for FHLB membership, FHFA should clearly and transparently define the minimum requirements for captive insurer affiliates, which would provide direction to the FHLBs as they evaluate new applicants.

Such a framework would include numerous components, including standards related to the housing finance activities of applicants, required purchases of FHLB stock, parental/affiliate guarantees, capital, liquidity, collateral quality and haircuts, priority of secured interests, and financial reporting. These components would ensure that the FHLBs are only taking on members with a clear nexus to their housing finance missions, while also promoting the safety and soundness of the FHLB System.

A well-crafted framework, therefore, would strengthen the broader housing finance system by increasing the supply of reliable, longer-term liquidity to institutions that play critical roles in this system. MBA expects that two classes of potential entrants are particularly well-suited to attain FHLB membership under such a framework: independent mortgage banks (IMBs) and mortgage real estate investment trusts.

MBA provided a detailed roadmap for the development of this expanded FHLB membership framework in its response to a 2020 Request for Input from FHFA.[21,22] After nearly two years to review the public comments on this Request for Input, FHFA now should move forward with appropriate amendments to its regulations on FHLB membership.

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[20] MBA has also advocated extensively for Congress to enact legislation that clarifies FHLB membership eligibility for independent mortgage banks, mortgage real estate investment trusts, and other financial institutions primarily engaged in housing finance. Any regulatory actions taken by FHFA to refine the FHLB membership eligibility framework with respect to captive insurers can be undertaken as a complementary measure to such legislation, or in the absence of such legislation.

[21] Federal Housing Finance Agency, "Request for Input: Federal Home Loan Bank Membership," February 24, 2020. Available at: https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/RFI-on-FHLBank-Membership.pdf.

[22] MBA, "Response to FHFA Request for Input on Federal Home Loan Bank Membership," June 23, 2020. Available at: https://www.mba.org/Documents/MBA_FHFA_RFI_FHLB_Membership_June2020.pdf.

OBJECTIVE 2.4: FACILITATE GREATER AVAILABILITY OF AFFORDABLE HOUSING SUPPLY, INCLUDING AFFORDABLE RENTAL HOUSING

We appreciate FHFA's focus in the Strategic Plan on Enterprise efforts to increase workforce and affordable rental housing and the role the Enterprises' multifamily programs, as well as programs to support the financing of 2–4 unit properties, manufactured housing, and accessory dwelling units, play in meeting affordable rental housing needs.

As part of that focus, we urge FHFA to monitor the interaction of the multifamily caps carefully, including the mission-driven elements of those caps, the unit-based multifamily affordable housing goals, and market developments.[23] FHFA has appropriately reserved the right to adjust (but not reduce) the caps if necessary to prevent market disruption.[24] FHFA similarly retains authority to adjust its affordable housing goals to reflect subsequent available data and market developments.[25]

OBJECTIVE 2.5: SUPPORT LEVERAGING OF TECHNOLOGY AND DATA TO FURTHER PROMOTE EFFICIENCY AND COST SAVINGS IN MORTGAGE PROCESSES

Incorporation of Non-Traditional Data in Underwriting

MBA supports and commends FHFA's plan to explore the use of non-traditional data in the mortgage underwriting process. Greater use of data such as rent, cell phone, and utility payments holds the potential to increase access to credit for borrowers from underserved communities. These borrowers historically have had reduced access to traditional financial products that are more consistently reported to the national credit reporting agencies. By including this data, with a particular focus on rent payments, lenders would be furnished with additional information on which to evaluate a consumer's credit history. Recent efforts by the Enterprises to consider positive rental payment history in underwriting (Fannie Mae) and encourage reporting of positive rental payments by multifamily landlords (Freddie Mac) are encouraging. The Enterprises should continue to collaborate with industry and other stakeholders to innovate and find new mechanisms for considering non-traditional data.

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[23] We note that the multifamily caps that are incorporated into the PSPAs have been suspended since September 14, 2021. We urge FHFA to work with Treasury to remove those provisions of the PSPAs.

[24] See "2022 Scorecard for Fannie Mae, Freddie Mac, and Common Securitization Solutions," Appendix A: Multifamily Definitions at p. 1 (Nov. 17, 2021) ("FHFA anticipates the $78 billion cap to be appropriate given current market forecasts; however, FHFA will continue to review its estimates of market size and mission-driven minimum requirements throughout the year. To prevent market disruption, if FHFA determines that the actual size of the 2022 market is smaller than was initially projected, FHFA will not reduce the caps.").

[25] See 12 C.F.R. §§ 1282.11(b); 1282.14.

Updates to Approved Credit Score Models

As MBA has noted in prior comments to FHFA, the process for approving credit score models for use by the Enterprises should be data-driven and transparent, with a focus on predictive capacity and analytical rigor. Because credit scores can play an important role in determining borrower access to certain mortgage products through two channels – eligibility criteria for products with minimum score requirements and loan pricing – there are clear benefits to ensuring the Enterprises use the best models available. The use of updated models also should help broaden the scope of eligible borrowers and expand access to individuals who may have been more difficult to evaluate using older models.

FHFA should ensure that it provides the time, guidance, and resources necessary for a smooth transition to the use of one or more new credit score models by the Enterprises. Any such updates to the Enterprises' credit scoring model requirements will have significant effects not just on the Enterprises, but on a wide range of industry participants including lenders, servicers, investors, mortgage insurers, and vendors and service providers, among others. Industry participants will need to engage in extensive personnel training, recalibration of internal systems and processes, updates to models and risk analyses, changes to investor reporting, changes to pricing structures, and testing and quality control.

The different options put forth for consideration by FHFA in its 2017 Request for Input[26] and in its recent listening sessions will require different types of implementation resources and entail different types of challenges for the Enterprises and industry participants. FHFA should take a conservative approach with respect to the timelines by which use of a new model or models is made mandatory. It also is imperative that FHFA and the Enterprises continue to engage with the industry and relevant stakeholders as this process unfolds to provide guidance and resources, where necessary, to address any implementation hurdles.

Updates to the Enterprises' approved credit score model requirements have the potential to improve both risk management and consumer access to credit, but great care must be taken to avoid market disruption as a result of the transition to any new requirements.

Appraisals

There is broad industry support for efforts to further modernize Enterprise appraisal processes and requirements, particularly with respect to an expanded role for technology-based approaches. As the industry continues to contend with the effects of the COVID-19 pandemic, it has seen a further reduction in the number of appraisers available across the country. This reduction in the appraiser workforce, combined with record origination volumes over the past two years, has reverberated throughout the industry, leading to

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[26] Federal Housing Finance Agency, "Credit Score Request for Input," December 20, 2017. Available at: https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/CreditScore_RFI-2017.pdf.

dramatic increases in both appraisal costs and turn times. These outcomes are particularly evident in rural areas across the country, where appraisers are likely to be required to travel farther between properties, thereby reducing the number of appraisals able to be completed.

Modernization of the Enterprises' appraisal process and requirements should include a variety of valuation approaches: desktop appraisals, hybrid appraisals, automated valuation models, and appraisal waivers, in addition to traditional appraisals. Each of these approaches can be well-suited for varying types of properties or transactions, and the Enterprises should use the full range of approaches to ensure reliable valuations while reducing demands on limited appraiser time and resources. This framework provides more flexibility than an "all or nothing" model that is characterized by a reliance on traditional appraisals and appraisal waivers. This framework also provides more flexibility to adjust the share of transactions that utilize each valuation approach over time, allowing the Enterprises to accommodate technological advances and changing market conditions.

Incorporating these technologies and options also has the potential to decrease racial bias in the appraisal process. Recent research has more vividly documented patterns of homeowners from minority backgrounds receiving below-market valuations, fueling inequity in the housing market and reducing these homeowners' ability to build wealth through their properties. It is incumbent upon FHFA and the Enterprises, as well as a wide range of stakeholders, to pursue efforts to root out any such bias – whether intentional or otherwise. Valuation approaches other than traditional appraisals may be able to remove some of the human element that may be contributing to this phenomenon, though technology on its own cannot be guaranteed to eliminate bias. FHFA and the Enterprises should combine technological advances with data analysis, process improvements, and educational tools to identify and combat bias in valuations. MBA and the industry stand ready to assist in these efforts.

Finally, FHFA and the Enterprises should collaborate in these efforts not just with industry stakeholders, but also with other federal bodies responsible for setting appraisal standards for government-backed loans and loans held in depository institution portfolios. Any changes to the manner in which appraisals are conducted, technology is developed, or data is collected should be undertaken with an eye toward consistency across markets. Solutions that are too Enterprise-focused may serve the needs of the Enterprises and lenders delivering loans to them, but could create frictions that disadvantage other types of products or executions – ultimately to the detriment of borrowers.

CHALLENGES AND RISKS THAT MAY HINDER ACHIEVEMENT OF STRATEGIC GOALS

COVID-19-Related Policies

The Strategic Plan references the impacts and continued uncertainty surrounding the COVID-19 pandemic among the "Challenges and Risks that May Hinder Achievement of Strategic Goals." Over the past two years, FHFA has implemented both temporary flexibilities that have promoted smooth market functioning and temporary restrictions designed to protect the regulated entities. While many of these policies have been permitted to expire, MBA believes there are two additional COVID-19-related policies FHFA should address to improve market outcomes.

MBA has expressed concerns with respect to the application of the Enterprises' R&W Frameworks to certain loans subject to COVID-19 forbearance. Despite the global health emergency, when the availability of forbearance was mandated for all Enterprise-backed loans, the Enterprises have deviated from the well-established provision through which loans achieve R&W enforcement relief after a satisfactory 36-month payment history by the borrower. MBA believes the Enterprises should not disqualify loans from R&W enforcement relief solely due to payments missed by borrowers during a period of COVID-19 forbearance. The Enterprises instead should adopt a reasonable compromise by which missed payments while in forbearance neither count toward nor against the required consecutive payments specified in the R&W Frameworks. Such a compromise would more accurately reflect the spirit of both COVID-19 forbearance (*i.e.*, not penalizing parties for the availability of forbearance mandated by regulators and legislators in response to a national emergency) and the R&W Frameworks (*i.e.*, reducing uncertainty that leads to credit overlays and diminished access for consumers).

In response to volatile market conditions during the onset of the COVID-19 pandemic, FHFA also suspended the Enterprises' ability to execute bulk purchases of seasoned loans. The market has since normalized, but this suspension has yet to be reversed. These transactions, which are particularly vital for smaller banks and credit unions, provide an additional avenue for liquidity management, enhancing diversity in the secondary market and supporting equal access to the liquidity provided by the Enterprises for lenders of all types and sizes. They also represent important mechanisms for lenders to manage interest rate risk or concentration risk. MBA therefore urges FHFA to revisit this policy and remove the suspension on bulk purchases of seasoned loans.

Examination Authority over Enterprise Counterparties

Another challenge that relates to the 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 safety and soundness regulator of the Enterprises and the FHLBs, not as a marketplace regulator.

Direct FHFA examination of IMBs operating in the primary market, moreover, would be duplicative of the efforts already carried out by several other entities. IMB servicers are subject to licensing and financial safety-and-soundness supervision in every state in which they do business and are supervised for consumer-facing matters at the federal level by the Consumer Financial Protection Bureau (CFPB). They are also subject to frequent compliance examinations by these state regulators and the CFPB. Additionally, the Enterprises, Ginnie Mae, and state regulators (through the Conference of State Bank Supervisors) are all in the process of revising minimum capital, liquidity, and net worth requirements for IMB servicers and monitor adherence to these requirements regularly. IMB servicers also are subject to financial covenants put in place by their warehouse lenders, which adds another layer of oversight with respect to their financial condition and risk management practices.

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).[27] The BSCA, however, would not be an appropriate model for FHFA and its relationship with IMB 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 activities, and as such, IMB servicers do not fall under this construct. IMB 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, IMB seller/servicers are customers of the Enterprises – not vendors to them. 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'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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[27] 12 U.S.C. § 1867.

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MBA once again thanks FHFA for the opportunity to comment on the draft Strategic Plan for Fiscal Years 2022-2026. We believe the recommendations provided above will further strengthen FHFA's ability to meet the goals set forth in the Strategic Plan, including positioning the Enterprises to exit conservatorship safely 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 regulated entities meet their statutory missions while operating with financial strength and appropriate market conduct.

Sincerely,

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