

March 5, 2021

Via Electronic SubmissionFederal Housing Finance Agency
Eighth Floor
400 Seventh Street SW
Washington, DC 20219Attention: Alfred M. Pollard, Esq.
General CounselRE: Request for Public Comment: Resolution Planning Requirements for Fannie Mae and Freddie Mac, RIN 2590-AB13 (Proposal)¹

Ladies and Gentlemen:

The American Bankers Association (ABA)² appreciates this opportunity to provide the views of our members on the Proposal. The Proposal would require the Fannie Mae and Freddie Mac (GSEs) to prepare resolution plans (also known as “living wills”) similar to those that large banking organizations have been required to submit since 2012 under the Dodd-Frank Act.³ The Proposal, like the regulations for large bank resolution plans, describes the proposed content of the plans, the timing and process for filing, receiving and reacting to feedback from the Federal Housing Finance Agency (FHFA), updating for material changes, the proposed extent of public disclosure of resolution plan information, and resolving deficiencies and shortcomings. The Proposal also raises a number of specific questions on which FHFA invites feedback.

Key Considerations and Objectives of the GSE Resolution Planning Process

In its implementation of resolution planning rules, FHFA should follow three important principles:

- FHFA rightly acknowledges that resolution of GSEs must take into account reliance on their operations by other market participants, and that substitute actors for what GSEs do likely will not be readily available.⁴ This objective is required under the

¹ See 86 *Federal Register* 1326, January 8, 2021, available at <https://www.govinfo.gov/content/pkg/FR-2021-01-08/pdf/2020-28812.pdf>.

² The American Bankers Association is the voice of the nation’s \$21.9 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard nearly \$17 trillion in deposits and extend nearly \$11 trillion in loans.

³ The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376-2223, July 21, 2010.

⁴ See Proposal at 1329.

Safety and Soundness Act.⁵ There are many useful lessons learned from bank living wills process, but GSE resolution planning objectives are unique.

- Transparency is vitally important – the GSEs’ resolution plans’ public sections must be more extensive than those for banking organizations, because of the higher degree of public interest in the continued stability and functioning of the national housing market.
- The Proposal generally fits the GSEs’ current circumstances, but there should be no delay in the progress of GSE reforms. Those reforms will likely alter the requirements of GSE resolution framework and planning.

DISCUSSION

Resolution planning should enhance mission execution.

As the Proposal notes, GSE resolution plans will differ from those required of insured depository institutions and bank holding companies, in that the goals of GSE resolution planning are to facilitate the continuation of the GSEs’ functions that are essential to maintaining stability in the housing market, in addition to allocating losses to creditors in the order of their priority.⁶ FHFA expects to achieve the former objective by transferring GSE assets and operations to a “limited-life regulated entity” (LLRE). ABA urges FHFA to make clear distinctions between those operations and assets that will be transferred to the LLRE and those that will not be.

In particular, the GSEs’ resolution plans must make clear to market participants and the public what the operational capabilities of the LLRE will be and what any changes or limitations will be, compared to pre-resolution operations. This information should be public well prior to any possible resolution (at least to the extent of a best estimate), should be a key element of any resolution plan, and should be updated regularly and publicly. If expectations change during the life of the LLRE, FHFA should provide prompt public disclosure.

Also, as noted in the Proposal, resolution plans should make clear how claims of various classes of creditors (including holders of debt securities and guaranteed mortgage-backed securities) and other GSE stakeholders will be handled.⁷ It is essential that the resolution planning process avoid creating uncertainty in financial markets, which would result in spreads widening and housing finance becoming more expensive. Transparency in application of the rule of law will serve not only the goals of the resolution planning process but also the enhancement of day-to-day functioning of the housing finance market.

In the Proposal FHFA raises a number of definitional questions. In ABA’s view, “critical services” need not be defined separately from “core business lines,” but resolution plans should

⁵ Federal Housing Enterprises Financial Safety and Soundness Act, 12 U.S.C. 4501 *et seq.*

⁶ Proposal at 1329.

⁷ *Id.*

clearly capture, for example, dependencies on key vendors and other counterparties, because continuance of those relationships would affect the core business lines. As long as such dependencies are clearly identified and a strategy for addressing the related needs in all phases of the resolution process is part of the plan, nomenclature is relatively unimportant, though readers familiar with banking organizations' resolution plans likely will find similar terminology easy to understand.

Finally, if the LLRE a limited is intended to have a limited life, there should be guidance about its eventual termination, and about how housing finance market stability will be safeguarded afterwards. These considerations are perhaps beyond the scope of what the GSEs can reasonably address in resolution plans, because they are within FHFA's purview. Their importance cannot be ignored, however, particularly in light of market experience during the GSEs' extended conservatorships. In connection with finalizing the GSE resolution planning process, FHFA should take care to address likely post-resolution outcomes as clearly as possible.

Resolution planning should promote transparency.

FHFA's final rule should provide a more extensive public section of the GSEs' resolution plans than the large-bank resolution planning process produces. There should be proportionally less proprietary information or information that could be competitively sensitive in the GSEs' resolution plans, compared to diverse banking organizations in a highly competitive, fractional market. On the other hand, in the case of the GSEs, there is arguably an even greater need for improved market discipline, which greater transparency will promote.

Furthermore, ABA recommends that FHFA's final rule provide for public notice of material changes to GSE operations, corporate structures, capabilities, etc. that result or will result from their resolution planning. The notice should apply to regular resolution plan submissions, interim updates, and notices of material changes. As noted above, avoiding market confusion or disruption is a critical consideration for GSE resolution planning. Similarly, in connection with its final rule, FHFA should announce what changes to the GSEs' public disclosures are appropriate following establishment of the resolution planning process.

Other Matters

Potential GSE use of total loss-absorbing capacity, or some other contingent source of loss absorbency, probably cannot follow the model for global systemically important banks.

The regulatory design of "TLAC" is closely tied to the US regulators' preferred "single point of entry" (SPOE) strategy for systemically important institutions, which applies to "clean" holding companies, having no direct operations or material liabilities other than unsecured long-term debt and conducting their operations through subsidiaries. The various forms of contingent loss-absorbing instruments could provide relief from technical insolvency, but not from serious

liquidity stress. Their expected utility in the bank resolution context in avoiding insolvency of operating subsidiaries is inapplicable to the GSEs' corporate structure.

If FHFA wants to adapt the TLAC concept to GSE resolutions, it should provide ample opportunity for public comment, since many capital markets participants will have potential concerns. Among other things, FHFA will have to give careful considerations to the appropriate "triggers" for loss absorption.

The Proposal is unclear on how resolution costs will figure into resolution planning.

If resolution planning aims to preserve the GSEs' core housing mission and provide certainty of claims administration, there remains the question of at what cost, and to whom. Though there is no intention to create taxpayer exposure, ABA believes that FHFA should consider costs and other impacts on consumers, investors (which include many public entities such as pension funds, in addition to banks and other financial institutions), and other stakeholders.

FHFA should make clear the implications for a GSE resolution if FHFA must act in a time of general financial instability, increased market risk/volatility, etc.

ABA believes that GSE resolution planning should include consideration of broader market impact in conditions of financial market instability, not just housing finance market stability. The Proposal mentions this issue in passing,⁸ but lacks significant discussion. The experience of 2008 leaves no doubt that any resolution of a GSE will have significant consequences for broader financial market stability.

Resolution planning is not a substitute for GSE reform.

As noted above, effective resolution planning serves the interest of long-term health and stability of the national housing market and financial markets generally, but it will not reduce the need for comprehensive, Congressionally-led reform of Fannie Mae and Freddie Mac. Among other questions, resolution planning cannot address critical questions related to capital structure, housing goals, general governance, and other key concerns such as the scope of the Federal guarantee provided in the post-conservatorship existence of the GSEs, nor the remaining uncertainties necessary to end the conservatorships. All parties in interest should continue the drive toward appropriate refinements in the Federal role in the national housing markets. Once the objectives of GSE reform are achieved, the scope and requirements of GSE resolution planning will undoubtedly have to evolve. As with respect to capital and liquidity regulations and many other aspects of FHFA's regulatory regime for the GSEs, effective reform will trigger the need for proposed updates to resolution planning requirements. Only when there is a clearer understanding of the segments of the market that the GSEs are expected to serve will it be possible to understand whether all of these rules are the right ones for the mission.

⁸ See Proposal at 1331.

Federal Housing Finance Agency

March 5, 2021

Page 5

Thank you for the opportunity to express our views on these important issues. Should you have any questions, please do not hesitate to contact the undersigned at hbenton@aba.com or Joe Pigg at Jpigg@aba.com.

Very truly yours,

/s/

Hu A. Benton

Vice President, Banking Policy