

March 9, 2021

Charlie Oppler
2021 President

Bob Goldberg
Chief Executive Officer

The Honorable Mark Calabria
Director
Federal Housing Finance Agency
Constitution Center
400 7th Street, SW
Washington, D.C. 20219

Dear Director Calabria:

ADVOCACY GROUP

Shannon McGahn
Chief Advocacy Officer

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), I submit this letter in response to the notice of proposed rulemaking (proposed rule), *Resolution Planning* (RIN 2590-AB13). NAR appreciates the efforts by the FHFA to establish a safe and sound framework for the enterprises to perform their charter duties throughout the solvency resolution process. However, NAR believes that the enterprises would be better supported to meet their charter duties if designated Systemically Important Financial Market Utilities (SIFMUs). Furthermore, despite recognizing their critical market function, the proposed rule assumes a limited or no government support in a crisis. The FHFA should analyze the benefits or costs of an explicit, paid for guarantee on GSE securities or charter duties and make recommendations to Congress to work toward that goal.

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,200 local associations or boards, and 54 state and territory associations of REALTORS®. NAR represents a wide variety of housing industry professionals, including approximately 25,000 licensed and certified appraisers, committed to the development and preservation of the nation's housing stock, along with its availability to the widest range of potential homebuyers.

Homeownership is a central part of the fabric of the American dream and the Enterprises play an important role in helping achieve that dream. The Enterprises' congressionally-mandated mission of providing liquidity to real estate investment in all markets and all times is a critical piece of the U.S. mortgage finance system. Establishing a review process to enforce their viability throughout the resolution process is critical to providing market support at all times.

Statutory Basis for Resolution Planning

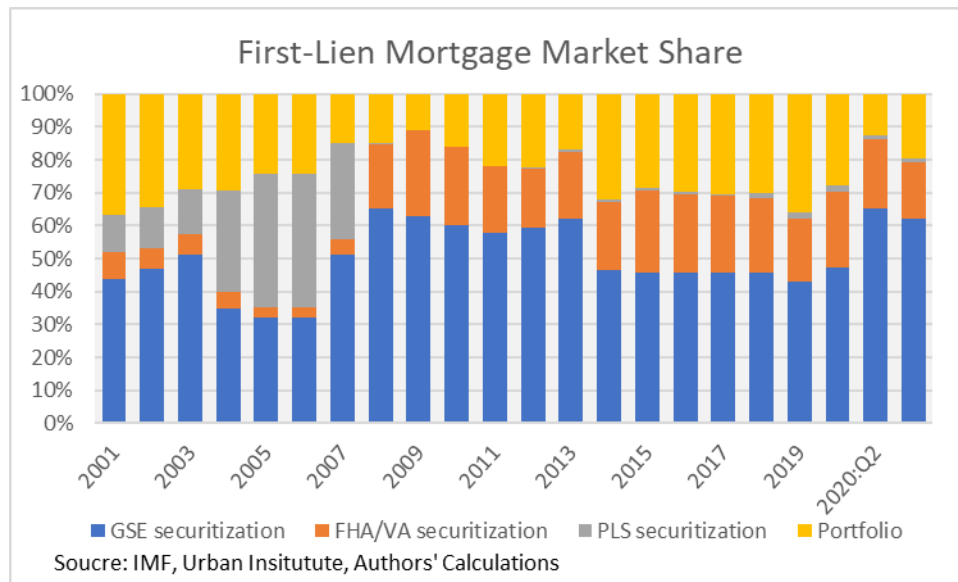
The GSEs are tasked by Congress with duties to support liquidity of real estate investment in all real estate markets in the U.S., even during a crisis. Simultaneously, the FHFA's power to conserve or liquidate



a bank is modeled on the Federal Deposit Insurance Corporation's (FDIC) program, but for its practice of levying a fee to support activities of the impaired entity while in the resolution process. To facilitate activities while in resolution, the Safety and Soundness Act transfers the responsibility of maintaining the GSEs' congressionally chartered duties to surviving companies that would take the GSEs assets, known as limited-life regulated entity (LLREs). However, the Act does not flesh out what duties or services would be transferred or how to enforce that they are carried out.

In this NPR, the FHFA proposes to leverage the “rapid and orderly resolution ” language from the Federal Reserve’s practice of oversight of large bank holding companies and non-bank financial companies under section 165 of the Dodd-Frank Act (section 165).¹ However, the FHFA recognizes differences between the chartered banks overseen by the Federal Reserve and the GSEs and seeks a rule that is, “appropriately tailored, goal—resolution, if necessary, of a large financial intermediary that performs functions other market participants rely on for their efficient operation, and which would be difficult to transfer or for which there are not available substitutes.”²

The framework would require each GSE to identify critical business lines and to develop a plan for maintaining them through resolution. This framework would be reviewed by the FHFA and either accepted or require efforts to remediate deficiencies. This process would be repeated for additional business lines. Finally, the FHFA would deem this process part of its prudential management and operations standards (PMOS) under 12 CFR part 1236 of section 4513b(b). The FHFA sets out a time frame for the process and notes that a corrective approach could be, “more constructive and more conducive to improvements in a resolution plan or the Enterprise planning process than an enforcement approach,”³ but reserves the right to take enforcement actions such as a cease and desist order under its general authority and civil money penalties.



NAR appreciates the thoughtful and important framework that the FHFA has created. This is a critical step in strengthening oversight of the GSEs for their eventual exit from conservatorship. However, there is a clear tension between the FHFA’s use of section 165, which applies to bank holding companies and large non-bank financial companies, and section 804 of the DFA, which provides the Financial Stability Oversight Counsel (FSOC), “the authority to designate a financial market utility (“FMU”) that the Council determines is or is likely to become systemically important.”⁴ This distinction is necessary “because the failure of or a disruption to the functioning of

¹ See its implementing rule, 12 CFR 243.2

² Federal Housing Finance Agency. Resolution Planning (RIN 2590-AB13). December, 2020, pp. 17

³ Id at pp. 53

⁴ See 12 CFR Chapter XIII and Part 132: <https://www.govinfo.gov/content/pkg/FR-2011-07-27/pdf/2011-18948.pdf#page=11>

the FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the United States financial system.”⁵

Indeed, while it utilized section 165, the FHFA simultaneously recognizes the GSEs play a role in the market that “other entities rely on” and for which “there are not available substitutes” (see above). As depicted in the chart below, the GSEs’ market share swelled from roughly 50% over the market from 2005 to 2019 to 65% of the market in the second quarter of 2020 as private capital left the market and the country was engulfed in the pandemic response. The GSEs’ transfer of rate and credit risk to counterparties through markets for mortgage backed securities and credit risk facilitates their charter duties, the failure of which would be negative for “critical markets, financial institutions, or the broader financial system”.⁶ The SIFMU status allows for back up regulator and prudential regulation and could be tailored to align the incentives of GSE investor for loss taking and resolution. To this end, the FHFA should reevaluate the statutory basis for oversight of the GSEs in light of section 804 and the benefits of SIFMU status.

Need to Expand the Scope of Proposal

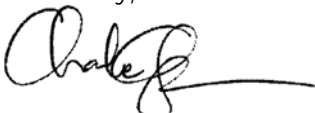
The FHFA notes that its resolution process as laid out in HERA is modeled on the FDIC’s process, but adds that there is no funding source akin to the FDIC’s deposit insurance fund (DIF) to conduct resolution duties. The DIF is a fee levied on banks in the FDIC system in exchange for insurance on the deposits of the banks’ customers. This support helps to lower the cost of funding for member banks, particularly in a crisis. Furthermore, “because Enterprise obligations and securities are not backed by the full faith and credit of the United States and because there is no DIF-like fund for Enterprise resolution, resolution of an Enterprise by FHFA necessarily would involve only the Enterprise’s resources available to absorb losses and satisfy investor and creditor claims—Enterprise assets, capital and capital-like instruments, and contracts that transfer risk of loss to third parties.”⁷

The FHFA identified a clear deficiency of the current system, but does not offer a similar fund to which the GSEs would pay into to fund their own resolution functions or to support charter duties in a crisis. Rather, as NAR previously [commented](#), it appears that the FHFA has taken the tact of inefficiently over-capitalizing the GSEs via their capital rule with buffers that neither reflect the risks of the GSEs unique business model or their charter duties. The FHFA should evaluate the different types of paid-for guarantees the GSEs might be provided; to cover the mortgage backed securities they issue, the GSE franchises, a more limited set of charter duties they GSEs provide, or some combination thereof. A wholistic evaluation of the impact of a full guarantee on the safety and soundness of the system as well as the ability of the GSEs to support their charter obligations could provide the basis for more responsible capital and liquidity rules and appropriate resolution planning. Finally, the FHFA could recommend to Congress the appropriate government support needed for the GSEs.

Conclusion

Thank you for advancing work to strengthen the GSEs’ resolution planning process and supporting critical charter duties. NAR appreciates the opportunity to comment on resolution planning and feels strongly that the FHFA would render a better construct if it worked with FSOC to designate the GSEs as SIFMU and evaluated the merits of a limited or full guarantee of the GSEs’ MBS, their charter duties, or some combination and incorporated those insights into future planning. If you have any questions, please contact Ken Fears, NAR’s Senior Policy Representative for Conventional Finance and Lending Policy, at 202.383.1066 or KFears@NAR.REALTOR.

Sincerely,



Charlie Oppler
2021 President, National Association of REALTORS®

⁵ Id.

⁶ Id at pp. 2

⁷ Federal Housing Finance Agency. Resolution Planning (RIN 2590-AB13). December, 2020, pp. 10