April 25, 2022

Sandra Thompson
Acting Director
Federal Housing Finance Agency
400 7th St. SW
10th Floor
Washington, DC 20219

RE: FHFA's Re-Proposal to Enhance Enterprise Seller/Servicer Eligibility Requirements

Dear Acting Director Thompson,

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the Federal Housing Finance Agency's (FHFA) Re-Proposal to Enhance Enterprise Seller/Servicer Eligibility Requirements. The primary rationale for the changes made in this re-proposal is to ensure prudent counterparty risk management by mitigating any risk exposure from the seller/servicers contracted to service single-family mortgage loans guaranteed or owned by Fannie Mae and Freddie Mac (the Enterprises). These eligibility requirements further strengthen the previous eligibility requirements for non-depository seller/servicers by setting baseline levels of tangible net worth, capital ratios, base liquidity, and origination liquidity. In

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.

With nearly 50,000 locations nationwide, community banks constitute roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding nearly $5.9 trillion in assets, over $4.9 trillion in deposits, and more than $3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

WASHINGTON, DC
1615 L Street NW
Suite 900
Washington, DC 20036

SAUK CENTRE, MN
518 Lincoln Road
P.O. Box 267
Sauk Centre, MN 56378

866-843-4222
www.icba.org

the case of large non-depository seller/servicers, there must be an additional liquidity buffer as well as an annual submission of proposed capital and liquidity plans.

Given that community banks are highly regulated depository institutions and therefore bound to their regulators' capital and liquidity standards, they are largely unaffected by the proposed changes in eligibility requirements, excepting the minimum tangible net worth requirements, which will have a small increase for Ginnie Mae servicing.[2]

ICBA's main concern is the safety and soundness of the Enterprises and the housing finance system. It is therefore critical that FHFA and the Enterprises weigh the risk of all counterparty contracts and tailor eligibility requirements commensurate with their respective risk. In this regard, ICBA is largely supportive of robust requirements, particularly for the larger non-bank seller/servicers that may pose a systemic risk. However, we caution FHFA to not impose excessive liquidity requirements on smaller seller/servicers that pose very little systemic risk.

Background

This re-proposal expands on the 2020 proposed eligibility requirements based on lessons learned from the COVID-19 pandemic and the market challenges that followed. The expanded requirements therefore recognize the need to cover seller risk resulting from liquidity challenges in the to-be-announced (TBA) market, as well as the costs associated with higher delinquency rates. It also recognizes the "importance of higher requirements for large non-depository servicers that are important to the mortgage servicing system and who hold a substantial portion of Enterprise servicing."[3]

One of the most significant changes in the re-proposal is the proposed incremental liquidity requirement of two percent for all non-depository mortgage originators that use the TBA market to hedge interest rate risk. The rationale here is that there is an inherent volatility and likelihood of price spikes during a market disruption, and the two percent reflects the shift in mortgage-backed security prices that occurred in early 2020. Additionally, the re-proposal

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[2] Both depositories and non-depositories must maintain tangible net worth of at least $2.5 million plus the dollar amount that is not less than the sum of: 0.25 percent of the seller/servicer's Enterprise SF servicing UPB; plus 0.25 percent of the seller/servicer's non-agency SF servicing UPB; plus 0.35 percent of the seller/servicer's Ginnie Mae servicing UPB – the latter reflects proposed incremental increase.

[3] https://www.fhfa.gov/Media/PublicAffairs/Documents/SE2-Proposal-FAQ.pdf, p. 2.

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increases the minimum capital ratio for all non-depository seller/servicers from six percent to nine percent, reflecting the minimum leverage ratio required of community banks. The re-proposal also outlines a set of base liquidity requirements to account for the differences in liquidity needs associated with each type of servicing and is intended to protect against high levels of delinquency.

Applicable to only large non-depository seller/servicers, the re-proposal would require an additional buffer of eligible liquid assets which would act as an additional layer of protection during an economic downturn.[4] Moreover, large non-depository seller/servicers would be required to annually submit capital and liquidity plans to the Enterprises that provide a detailed analysis of their liquidity and capital status. Large non-depository seller/servicers must also provide a third-party assessment of their performance and creditworthiness.

ICBA Comments

ICBA appreciates that FHFA is proposing to set robust standards for non-bank seller/servicers and broadly enacting policies that mitigate counterparty risks to the Enterprises. The safety and soundness of the Enterprises is our greatest concern. Many community banks rely on the Enterprises for secondary market access, which allows them to support the mortgage lending demand in their communities without having to give up mortgage servicing rights. It is therefore critical that the Enterprises continue to focus on risk mitigation and sound business practices. This includes the careful consideration of the counterparty risk of non-bank seller/servicers, particularly the large entities that could pose a systemic threat.

FHFA must tailor the requirements to the overall risk of the non-bank seller/servicer. These proposed requirements are a positive step in that direction. However, we want to emphasize that any systemic risk is mainly concentrated among the large non-depository seller/servicers that dominate the market in this space. We therefore urge FHFA to be careful not to implement requirements that are overly burdensome for small seller/servicers that pose little to no risk to the Enterprises. The two percent TBA hedging requirement in particular will likely force many of

[4] The requirement is 0.02 percent of the seller/servicer's Enterprise single family servicing UPB and 0.05 percent of the seller/servicer's Ginnie Mae single family servicing UPB.

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the smaller entities out of the business. Doing so may result in industry consolidation and the further expansion of the largest non-bank seller servicers.

While these re-proposed eligibility requirements will not have a material impact on most community banks, we are greatly concerned about any new requirements that create additional challenges for small lenders to sell and service Enterprise loans. Community banks are finding that the compliance costs and complexity of selling to the Enterprises are difficult to justify. Even holding Enterprise servicing rights is often untenable for the average community bank that services well under five thousand loans.

ICBA looks forward to working with FHFA on this issue going forward. If you have any questions regarding the content of this letter, please contact the undersigned at tim.roy@icba.org.

Sincerely,

Tim Roy
AVP – Housing Finance Policy