November 25, 2008

Office of the Comptroller of the Currency
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Docket No. OCC-2008-0016

Jennifer Johnson
Board of Governors of the
Federal Reserve System
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Docket No. R-1329

Mr. Robert Feldman
Executive Secretary
Federal Deposit Insurance Corporation
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RIN # 3064-AD32

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
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Attention: OTS-2008-0010

Subject: MBA's Comments for "Minimum Capital Ratios; Capital Maintenance; Capital Treatment of Certain Claims on, or Guaranteed by, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)"

Ladies and Gentlemen:

The Mortgage Bankers Association[1] (MBA) welcomes the opportunity to comment on the proposed changes to regulatory capital requirements for financial institutions (hereby banks) set forth in the recent Notice of Rulemaking, **"**Minimum Capital Ratios; Capital Maintenance; Capital Treatment of Certain Claims on, or Guaranteed by, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)"

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1 The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 370,000 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 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 over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

Background

The risk-based capital rules for banks and savings and loan associations (banks) currently require risk-based capital weightings of zero percent for Government National Mortgage Association (Ginnie Mae) securities and U. S. Treasury securities and twenty percent for securities issued by Fannie Mae or Freddie Mac. The zero percent weightings for Ginnie Mae and U. S. Treasury securities are a result of the explicit, full faith and credit guarantee by the United States Government. The 20% risk weighting historically accorded to Fannie Mae and Freddie Mac securities is the result of an "implicit" guarantee of the United States Government based on the government-sponsored status accorded Fannie Mae and Freddie Mac in the past.

On September 7, 2008, the U.S. Department of Treasury (Treasury) entered into senior preferred stock purchase agreements with Fannie Mae and Freddie Mac which effectively provide protection to the holders of senior debt, subordinated debt, and holders of mortgage-backed securities issued or guaranteed by these entities. The market perceives this as an explicit guarantee.

The proposed change in risk-based capital percentages would move the risk-based capital rating from a twenty percent to a ten percent risk weighting for mortgage-backed securities issued by Fannie Mae and Freddie Mac.

MBA's Comments

The capital markets perceive that the Treasury actions on September 7, 2008 changed the U. S. Government guarantee of Fannie Mae and Freddie Mac debt from "implicit" to "explicit". Accordingly, MBA believes that the appropriate risk-based capital rating should be zero percent, consistent with the treatment under the rules for Ginnie Mae securities and U.S. Treasury securities. Otherwise, Ginnie Mae securities will have a competitive advantage over securities issued by Fannie Mae and Freddie Mac with some principal market participants for such securities. MBA recommends that Fannie Mae and Freddie Mac securities be accorded a zero percent risk-based capital rating, in accordance with the market's current perception of the relationship between the U.S. government and Fannie Mae and Freddie Mac.

Further, the proposed rule is unclear as to what happens to the open credit positions as of the date the support agreement is cancelled. Would Fannie and Freddie debt go from a perceived explicit to implicit guarantee overnight? MBA is concerned that this could have a substantial negative impact on the markets and bank capital requirements. To remedy this, MBA proposes a "grandfather" provision for the perceived explicit guarantee and the proposed ten percent risk weighting for all credit agreements in effect on the date that the government withdraws its explicit guarantee. While "grandfathering" provisions are not within the authority of the banking regulators, it is an issue the Federal Housing Finance Agency should be encouraged to consider as a way to provide further confidence in the markets and the change in minimum capital ratios.

MBA greatly appreciates the opportunity to share its comments with the regulators on the proposed capital rules associated with intangible assets. Any questions about MBA's comments should be directed to Jim Gross, Associate Vice President and Staff Representative to MBA's Financial Management Committee, at (202) 557-2860 or jgross@mortgagebankers.org.

Most sincerely,

John A. Courson

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Chief Operating Officer
Mortgage Bankers Association