Mortgage Insurance Companies of America

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November 26, 2008

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219
Docket No: (OCC) -2008-0016

Jennifer J. Johnson
Secretary
Federal Reserve Board
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1335

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments/Legal ESS
RIN # 3064-AD34

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: OTS–2008–0014

Ladies and Gentlemen:

The Mortgage Insurance Companies of America (MICA) is pleased to comment on the inter-agency notice of proposed rulemaking (NPR) to revise the capital treatment for Fannie Mae and Freddie Mac [73 Fed. Reg. 63656]. MICA represents the nation's private mortgage insurance (MI) industry. As such, we have a strong interest in and deep commitment to a healthy U.S. mortgage market and successful government sponsored enterprises (GSEs). MIs are Fannie Mae's and Freddie Mac's largest credit-risk counterparties, giving the industry both a unique understanding of the GSEs and a stake in ensuring that the GSEs are soundly managed through the conservatorships and

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restructured thereafter in a way that supports a reformed, vibrant U.S. mortgage market.

Based on these facts, MICA's views on the NPR are summarized as follows:

- We urge the regulators to strengthen market confidence in the GSEs by reducing the risk-based capital (RBC) risk weight not only to ten percent, as proposed, but also to zero percent. This is consistent with the "effective" federal guarantee now backing Fannie Mae and Freddie Mac.

- Reflecting this effective guarantee and the urgent need for a renewed flow of capital for residential finance, the agencies should also waive the leverage requirement on GSE obligations for as long as the reduced risk-based capital weighting is in effect. While unusual, waiving the leverage requirement for certain obligations is no longer unprecedented in light of the Federal Reserve's decision[1] and subsequent OCC action[2] to assign a zero leverage-capital requirement to certain loans related to asset-backed commercial paper.

Finally, in response to the request for comment on a final capital regime for the GSEs, MICA urges the agencies to defer any such decision until the form the GSEs will assume after their conservatorship is determined by the Congress.

I. GSE Risk-Based Capital

MICA supports the proposed reduction in the risk weighting applied to Fannie Mae and Freddie Mac debt, mortgage-backed securities (MBS) and related obligations. However, as noted, we urge the regulators to expand it to provide for a zero risk weighting. We believe this is consistent with the actual risk posed by Fannie Mae and Freddie Mac while they are in conservatorship, as discussed below.

MICA understands that obligations of Fannie Mae and Freddie Mac do not carry an express federal guarantee and, indeed, that, by law[3] they must carry a designation to that effect. However, recent events have substantially changed the agencies' status on which the

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[1] Risk-Based Capital Guidelines; Leverage Capital Guidelines, 73 Fed. Reg. 55,706 (Sept. 26, 2008).
[2] Risk-Based Capital Guidelines—Money Market Mutual Funds, 73 Fed. Reg. 55,704 (Sept. 26, 2008).
[3] 12 U.S.C. § 4503 (2008).

current notice requirements are premised. In fact, the federal obligation to the GSEs now is so close and so strong that the Federal Housing Finance Agency (FHFA) director was quoted as telling mortgage bankers that the GSE guarantee is a "full" federal one.[4] His initial testimony before the Senate Banking Committee on October 23 also stated this, although Mr. Lockhart then corrected it to state that the GSEs have an "effective" federal guarantee. This was the position then taken by Treasury Under Secretary Ryan[5] and Chairman Bernanke[6]

In addition to these assertions, the GSEs pose essentially no credit risk because of the Treasury agreement to invest in the GSEs and provide liquidity to them if required. As detailed in the Treasury agreement cited in the NPR, this ensures that both Fannie Mae and Freddie Mac are insulated from receivership or any other event that would trigger default. A zero risk weighting is thus wholly appropriate in light both of recent official assertions and applicable credit risk.

II. Leverage Requirement

MICA knows that the banking agencies understand all too well the critical importance of a rapid recovery in U. S. mortgage finance. Chairman Bernanke, Comptroller Dugan, Chairman Bair and Director Reich have also spoken to this on numerous occasions, including in testimony before Congress. MICA thus will not present a detailed discussion of U.S. mortgage finance and its continued difficulties except to state – as each of the agency heads has done – that a renewed flow of affordable funding is vital to stabilize residential mortgages and, with it, prevent unnecessary foreclosures, support neighborhoods and promote economic recovery.

Fannie Mae and Freddie Mac are of course essential to the mortgage market, controlling as they now do almost all mortgage origination and securitization activity. As a result, U.S. residential mortgage finance will not improve unless or until demand for GSE obligations revives. While the proposed risk-based capital change discussed above is a significant improvement, the leverage-capital requirement – not the risk-based one – is the principal capital constraint on most U.S. banks, savings associations and holding companies. As a result, MICA believes that the reduced risk weighting – even if dropped

[4] "Fannie, Freddie Have `Explicit Guarantee,' FHFA Says", *Bloomberg News*, October 23, 2008.
[5] Acting Under Secretary for Domestic Finance Anthony Ryan Remarks at the SIFMA Annual Meeting, October 28, 2008.
[6] Federal Reserve Chairman Bernanke Remarks: "The Future of Mortgage Finance in the United States", UC Berkeley/UCLA Symposium, October 31.

to zero – will have limited impact on the mortgage market absent accompanying change in the leverage requirement.

MICA understands that the regulators have generally resisted any alteration in the leverage requirement. However, as noted, it was in fact waived by the Federal Reserve and OCC in connection with Federal Reserve loans related to asset-backed commercial paper (ABCP) commitments related to money-market mutual funds (MMMFs). This was an urgent action sparked by crises in the MMMF arena, but it remains in effect despite stabilization in that area. In contrast, the U.S. mortgage market remains highly volatile and subject to significant illiquidity. It is also at least as important to a fully-functioning U.S. financial system as the MMMFs, especially when the needs of borrowers facing foreclosure are taken into account.

As a result, MICA urges the regulators to waive the leverage requirement on GSE obligations for as long as the reduced risk-based capital weighting is in effect. We believe this will be critical to stabilizing U.S. residential-mortgage finance and, absent it, the reduced risk weighting could have little material impact in this critical sector.

In conclusion, MICA urges the regulators to provide the most favorable possible regulatory-capital treatment for GSE obligations. The critical role played by Fannie Mae and Freddie Mac should be facilitated to the greatest degree possible to promote rapid recovery in U.S. residential-mortgage finance – an essential element, of course, to stabilizing both U.S. and global financial markets. As with other emergency capital actions, the provisions affecting Fannie Mae and Freddie Mac can and should be revisited at the close of the conservatorships, when more normal market conditions should then be well established. Then, as suggested in the NPR, a new banking-agency capital approach to the GSEs may well be warranted. However, under current exigencies, the agencies should not only act on the proposed liberalization of the GSE risk weight, but go beyond that in both the risk-based and leverage capital standards.

MICA would be pleased to provide the agencies with any assistance in this regard or expand on the comments here provided.

Sincerely,

Suzanne Hutchinson

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