HOUSING FINANCE & LAND DEVELOPMENT

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SENIOR STAFF VICE PRESIDENT

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

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comment/Legal ESS

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551
Attention: Docket No. R-1335

Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: OTS-2008-0014

Subject: **Joint Notice of Proposed Rulemaking – Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital: Treatment of Certain Claims on, or Guaranteed by, Fannie Mae and Freddie Mac.**

Dear Sirs and Mesdames:

On behalf of the 235,000 members of the National Association of Home Builders (NAHB), I welcome the opportunity to respond to the Notice of Proposed Rulemaking (NPR) on risk weighting for claims on, and the portion of claims guaranteed by, Fannie Mae or Freddie Mac (Enterprises) issued jointly by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS), collectively, the Agencies. Specifically, the Agencies are proposing to amend their respective general risk-based capital rules to permit banks, bank holding companies and savings associations to assign a 10 percent risk weight to claims on, or guaranteed by, Fannie Mae or Freddie Mac. The current risk weight for these claims and guarantees is 20 percent.

NAHB is a national trade association representing individuals and companies involved in the production of housing and related activities. Each year, NAHB's builder members construct about 80 percent of all new housing in America. NAHB's builder members are predominately small businesses with limited capital of their own. These small businesses depend almost entirely upon commercial banks and thrifts for credit. The capital requirements imposed generally on financial institutions impacts the cost and availability of credit which is critical to the performance and health of the American economy. Likewise, regulated depository institutions play a significant role in financing home purchases and maintaining a liquid secondary market for mortgage-backed securities (MBS), which directly impacts rates that consumers pay for home mortgages. As the Enterprises, along with Ginnie Mae, have essentially been the only sources of secondary market financing during this prolonged credit crisis, the NPR would help keep mortgage funds flowing. NAHB supports this proposal with some recommended modifications.

Background

On September 7, 2008, the Federal Housing Finance Agency placed both Fannie Mae and Freddie Mac into conservatorship. On that date, the Department of Treasury (Treasury) entered into senior preferred stock purchase agreements with the Enterprises which effectively provided protection to the holders of senior debt, subordinated debt, and MBS issued or guaranteed by these entities. Also on that date, the Treasury announced the establishment of a credit facility to ensure credit availability to Fannie Mae and Freddie Mac. This credit facility is also available to the Federal Home Loan Banks (FHLBanks). These agreements enhance market stability by providing additional security to debt holders and improve mortgage affordability by providing additional confidence to investors in MBS guaranteed by the Enterprises.

Under the Agencies' general risk-based capital rules, claims on, and the portion of claims guaranteed by U.S. government sponsored agencies receive a 20 percent risk weight. In light of the additional financial support Treasury has committed to provide under the various agreements with the GSEs, the Agencies believe that a reduced risk weight is appropriate for claims on, or guaranteed by, Fannie or Freddie Mac. The Agencies are proposing to reduce this risk weight to 10 percent which would reflect the reduced credit risk of the Enterprises in light of the agreements with Treasury, and would apply to these exposures so long as the agreements remain in effect.

NAHB Position

NAHB believes that risk-weighting of Enterprise debt and MBS should reflect the same risk level of Treasury securities which are assigned risk weightings of zero percent under the Basel capital regulations. While the Enterprises obligations have a liquidity component that could create price volatility, it has no credit risk. This is underscored by the agreements the Agencies reference in the NPR and is further outlined below.

With the conservatorship action, Treasury Secretary Henry Paulson announced several measures under the government's backstop plan:

> First, Treasury established a senior preferred stock purchase agreement where Treasury will contribute cash capital to Fannie Mae or Freddie Mac if it is needed to maintain a positive net worth and avert triggering of a mandatory receivership. In exchange, Treasury receives shares of preferred stock and warrants representing an ownership stake in the Enterprises. The stock agreement is ***indefinite*** in terms and has a capacity of $100 billion for each Enterprise, an amount chosen to demonstrate a strong commitment to the Enterprises' creditors and MBS holders.
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> Second, Treasury established a credit facility to ensure Fannie Mae, Freddie Mac and the FHLBanks have continuous access to liquidity on an as-needed basis. The facility is intended to be the ultimate liquidity backstop, and is available through December 2009.
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> Third, Treasury agreed to purchase agency MBS to improve liquidity in the Agency market and to increase housing affordability. This authority will also expire at the end of 2009. The Treasury demonstrated its commitment by acquiring $21.5 billion of agency MBS in October alone.

The conservatorship plan was designed by policy makers to protect the interests of senior and subordinate debt holders as well as the positions of investors in MBS guaranteed by the Enterprises. Secretary Paulson has stated that because the government has allowed the ambiguity of implicit government support to prevail, he felt that Treasury had the responsibility to support Enterprise debt and MBS holders. However, common and preferred stockholders will not enjoy such protection and will stand first in line to absorb losses.

In an October 28 speech at the Securities Industry and Financial Markets Association's annual meeting, Acting Under Secretary for Domestic Finance, Anthony Ryan, made the following remarks:

> "Fannie Mae and Freddie Mac entered into a preferred stock purchase agreement with Treasury that effectively guarantees all debt issued by the Enterprises, both existing and to be issued. The U.S. government stands behind these enterprises, their debt and the mortgage backed securities they guarantee. Their mission is critical to the housing markets in the United States and no one will deny the importance of these institutions in assisting our housing markets in this downturn."

The Secretary also has indicated that the government's support to the Enterprises should be explicit for it to be effective. This is all very strong evidence that the obligations covered by the NPR have the credit risk equivalent of Treasury obligations and this should be reflected in financial institution risk-weightings for these instruments.

Finally, NAHB believes that the FHLBanks should receive consistent treatment on their debt securities. Failing to do this would put the FHLBanks, who have been an essential source of liquidity to its members during the credit crisis, at a major disadvantage relative to the Enterprises. We have recently witnessed the widening in FHLBank spreads relative to the Enterprises subsequent to the conservatorship action. This was a clear signal that markets believed Fannie Mae and Freddie Mac had greater government backing. Failure to put the

FHLBanks on a level playing field would exacerbate this situation. While the FHLBanks did not execute a senior preferred stock purchase agreement as did the Enterprises, they did receive some of the government backstop provisions, as noted above. Without consistent treatment, FHLBank advances would become more costly as financial institutions would be forced to access alternative funding sources. These unintended consequences could result in a squeeze in profitability and compromise the ability of the FHLBanks to keep liquidity flowing into the mortgage markets.

Conclusion

The proposed reduction in the risk-weighting requirement under the Agencies capital rules for GSE MBS and debt, from 20 percent to 10 percent, is a very positive development. Lower risk-weights would increase the capacity of banks to buy Agency MBS and debt which will bring liquidity into this market, reduce secondary market yields, and bring lower rates to consumers in the primary mortgage markets. NAHB, however, urges the Agencies to reduce the risk-weights to zero percent consistent with the risk weight on Treasury securities as the GSE securities now have effectively the same government backing as Treasuries.

Finally, NAHB recommends that any change made to the risk-weighting of Fannie Mae and Freddie Mac debt and MBS also be made to FHLBank debt. Parity in the risk weighting for all GSE debt would appropriately recognize the now explicit federal government support for all of the housing GSEs. Additionally, this would avoid the negative and unintended consequences on the ability of the FHLBanks to provide liquidity to community banks and the mortgage markets.

Thank you for this opportunity to comment on this proposal.

Sincerely,

David L. Ledford

David L. Ledford
Senior Staff Vice President
Housing Finance & Land Development