American Bankers Association

Rob Nichols
President and CEO
202-663-7512
rnichols@aba.com

April 9, 2021

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

The Honorable Mark Calabria
Director
Federal Housing Finance Agency
NW 400 7th Street, SW
Washington, DC 20219

Re: Meeting Request on Enterprise Product and Cash Window Limitations

Dear Secretary Yellen and Director Calabria:

I am writing on behalf of the members of the American Bankers Association[1] to request a meeting to discuss member concerns arising from recent changes announced to the Preferred Stock Purchase Agreements (PSPAs) governing the ongoing conservatorships of Fannie Mae and Freddie Mac (the Enterprises).[2]

We understand that the ongoing conservatorship of the Enterprises requires occasional changes to the PSPAs to reflect changing conditions and risks, and we welcome the recent changes that clarified milestones that they must meet in order to exit conservatorship. That clarity helps to ensure market stability. Other changes, however, run counter to that goal.

Specifically, our members are very concerned that limitations on certain product eligibility and limits on cash window sales – and the way in which those changes are being implemented – are undermining the stability and reliability of the mortgage market and risk limiting access to mortgage credit for lower income and other underserved borrowers.

Product Acquisition Limits

The PSPA revisions require the Enterprises to limit "acquisitions of Single Family Mortgage Loans secured by either investment properties or second homes to not more than 7 percent of the Single-Family Mortgage Loans acquired…during the preceding 52-week period."[3] Additionally, the revised PSPAs limit the Enterprises' acquisition of "higher risk" single-family loans to 6 percent of their purchase money mortgages and 3 percent of their refinance mortgages. A loan is considered higher risk if it has two or more of the following characteristics: a combined loan-to-value ratio at origination above 90 percent, a borrower debt-to-income ratio above 45 percent, or a credit score below 680. This ceiling also is measured over a 52-week average.[4]

[1] The American Bankers Association is the voice of the nation's $21.9 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $17.8 trillion in deposits and extend nearly $11 trillion in loans.

[2] U.S. Dept. of the Treasury, Treasury Department and FHFA Amend Terms of Preferred Stock Purchase Agreements for Fannie Mae and Freddie Mac (Jan. 14, 2021), https://home.treasury.gov/news/press-releases/sm1236.

[3] U.S. Dept. of Treasury, Executed Letter Agreements for Fannie Mae and Freddie Mac (Jan. 14, 2021), https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Fannie-Mae.pdf; https://home.treasury.gov/system/files/136/Executed-Letter-Agreement-for-Freddie%20Mac.pdf .

[4] *Id.*

These limitations are disrupting the origination market. Although disruptions are never welcome, they are especially ill-timed during the ongoing pandemic. When the modifications to the PSPAs were made, the limits may have been aligned with historical investment property and second home acquisitions. However, our members report significant increases in demand for second home and investment property loans in recent months driven by refinance activity and pandemic-related demand for alternative properties. Therefore, application of the PSPAs' 52-week lookback to calibrate the limits is affecting loans in the pipeline of many lenders. In particular, it is having a negative impact on community banks serving markets with high demand for second homes and investment properties as there is a lack of private market purchasers for these loans.

Our members' concerns are exacerbated by the manner in which these limits are being implemented. The Enterprises appear to be implementing the restrictions on a lender-by-lender basis, without uniform outreach or clear communication regarding timelines or compliance requirements. The result is adding to the chaos in this segment of the market.

Moreover, a recent study by the Urban Institute notes, "[I]nvestor properties are a lucrative part of the GSE portfolio."[5] Because the loan-level pricing adjustments on these loans are well above the compensation for their risk, this allows for cross-subsidization to the rest of the GSE purchases. "Although placing limitations on these markets will not directly affect any of the Biden administration's policy objectives, they are likely to significantly indirectly affect those objectives by reducing the resources by which the GSEs can reduce the cost of borrowing for underserved borrowers."[6] In addition, the rental units in one-to-four-family investment properties account for half of all rental units—many of which are rented by low-to-moderate income (LMI) households.

To date, the Enterprises have not provided information on the implementation of the caps on the acquisition of higher risk single-family loans. However, we are gravely concerned that these limitations will further restrict lending, and will disproportionately impact LMI and underserved borrowers. As reflected by the Urban Institute study, these limitations will directly undermine the goals of the Biden administration to advance racial equity.[7]

Finally, we observe that these caps can actually increase risks to the Enterprises. The refinance of an existing loan guaranteed by one of the Enterprises that reduces monthly payments, and thus reduces the risk of default, might not be eligible for purchase under the revised PSPAs if the Enterprise has reached its cap of higher risk loans. The caps on these loans will also have the effect of concentrating originations on lower risk refinances, constraining credit for borrowers who may be most in need of refinancing to improve their financial condition.

We believe that the impact of the product limitation caps on consumers and the market – as well as the timeline and process for their implementation – needs further analysis, and urge you to engage interested stakeholders in that analysis.

---

[5] Urban Institute, The Preferred Stock Purchase Agreements Will Hamper Access to Credit, 4 (Feb. 23, 2021), https://www.urban.org/sites/default/files/publication/103715/the-preferred-stock-purchase-agreements-will-hamper-access-to-credit_0.pdf.

[6] *Id.*

[7] *Id.*

Cash Window Limits
The PSPA revisions also include a requirement that, beginning January 1, 2022, the Enterprises shall "not acquire for cash consideration from any single seller…during any period comprising four calendar quarters Single-Family Mortgage Loans with an unpaid principal balance in excess of $1.5 billion."[8]

Access to the cash window is an important tool for many of our members engaged in mortgage lending. If access is restricted, some lenders will need to pursue alternative approaches including greater use of – or development of the capacity to engage in – mortgage-backed security (MBS) swaps, sales of loans to correspondent aggregators, or they will need to adjust their business model to other loan products.

Given the importance of the cash window to our members, ABA has long advocated that GSE reform preserve access to the cash window.[9] Before these limitations are implemented, ABA requests more information on how the $1.5 billion threshold was determined, why it was deemed necessary, and its expected impact. Was analysis done on how many lenders the threshold would impact? Do Treasury and FHFA have information on the markets served, both demographic and geographic, of impacted lenders—and their borrowers? We also request information on whether the restriction is a temporary measure, and if so, how long it is expected to last? What impact do Treasury and FHFA expect to see from this restriction on the overall secondary market?

As stated previously, ABA recognizes that the ongoing conservatorship of the Enterprises requires occasional changes to the PSPAs to reflect changing conditions and risks. However, the questions noted above underscore the unsuitability of establishing policy through contract rather than through notice and comment rulemaking.

Conclusion
The Enterprises play an integral part in our nation's mortgage markets and the ability of banks to meet customers' lending needs. We understand that Treasury and FHFA must responsibly manage the conservatorship of the Enterprises and establish prudent commitments regarding asset purchases. Revisions to the PSPAs must, however, reflect changing market conditions and the appurtenant risks, and those changes must be carefully constructed, well communicated, and properly implemented. The recent PSPA amendments do not meet these standards and we therefore request a meeting with you or your designees to discuss our questions and concerns.

Thank you in advance for consideration of this important request.

Sincerely,

Bob Nichols

[8] Executed Letter Agreements, *supra* note 3.
[9] *Hearing on GSE Reform Before the S. Comm. on Banking, Housing, and Urban Affairs*, 116th Cong. (2019) (statement for the record of American Bankers Association), https://www.aba.com/advocacy/policy-analysis/statement-gse-reform-and-bank-access-to-the-secondary-market.