MORTGAGE BANKERS ASSOCIATION

October 8, 2013

VIA ELECTRONIC SUBMISSION

Federal Housing Finance Agency
OHRP Multifamily Housing Policy
400 7th Street, S.W., Room 9-261
Washington, DC 20024

Re: MBA Comments on FHFA's Request for Public Input on the GSEs' Multifamily Scorecard

Ladies and Gentlemen:

The Mortgage Bankers Association[1] appreciates the opportunity to provide our views regarding the Federal Housing Finance Agency's Request for Public Input[2] (Request) on Fannie Mae and Freddie Mac's multifamily businesses and 2014 scorecard. As the national association representing the real estate finance industry, MBA represents all sectors and capital sources in commercial/multifamily real estate finance[3] and the single-family residential market.

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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 280,000 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 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit: www.mba.org.

[2] Federal Housing Finance Agency, "Options for Reducing Fannie Mae and Freddie Mac's Multifamily Businesses" Released by FHFA for Public Input (Aug. 9, 2013).

[3] Our commercial/multifamily real estate finance members include GSE lenders, commercial banks, life insurance companies, FHA multifamily lenders, CMBS issuers, REITs, servicers and a broad range of service providers to the real estate finance industry.

We welcome FHFA's transparency in issuing the Request. Seeking public input in connection with FHFA's development of the 2014 conservatorship scorecard supports a thoughtful, deliberative process, consistent with the principles of conservatorship. We recognize the importance of ongoing discussions on the role and footprint of the GSEs in both the multifamily and single-family mortgage markets. Our discussion below addresses possible approaches and concepts that are responsive to FHFA's Request.

We question, however, whether "reduction" *per se* should be the definitive course of action. To the extent that FHFA's "goal to contract is designed to reduce the Enterprises' risk exposure and allow for more private capital in the mortgage market,"[4] the multifamily businesses of the GSEs, in large part, are on solid footing.

- The GSEs' share of the multifamily origination market has declined substantially from the height of the financial crisis to now.
- The market is seeing vigorous competition among capital sources for multifamily debt, resulting in a natural reduction of GSE multifamily origination activities.
- At the same time, non-GSE, private capital sources are substantially increasing their multifamily production volumes.
- Both GSE platforms continue to attract and utilize significant private capital through their risk sharing executions.
- And from a credit risk exposure perspective, their current delinquency rates remain very low with each below 20 basis points.

As Acting Director DeMarco observed earlier this year:

> Unlike the single-family credit guarantee business, the Enterprises have a smaller market share and there are other providers of credit in the multifamily market. The Enterprises' market share of new multifamily originations did increase during the financial downturn, but in 2012 it returned to a more normal position.
>
> Another difference from the single-family business is that each Enterprise's multifamily business has weathered the housing crisis and generated positive cash flow. In contrast to their common approach to their single-family

[4] FHFA Request for Public Input, p. 2.

> businesses, Fannie Mae and Freddie Mac do not take the same approach to their multifamily businesses. Each approach also already embeds some type of risk sharing. For a significant portion of its business, Fannie Mae shares multifamily credit risk with loan originators through its delegated underwriting program. For a significant and increasing portion of its business, Freddie Mac shares multifamily credit risk with investors by issuing classes of securities backed by multifamily mortgages where the investor bears the credit risk.[5]

And while many policymakers have expressed a desire to reduce, in general, the GSEs' overall footprint, there is no consensus specific to the multifamily businesses of the GSEs. Accordingly, we recommend that the development of any multifamily-specific scorecard objective for 2014 be in concert with the broader goals of conservatorship.

Our letter, therefore, is organized as follows.

First, we describe the statutory mandates that define the scope and responsibilities of FHFA in its role as conservator of the GSEs. FHFA's 2012 "Strategic Plan for Enterprise Conservatorships"[6] sets the foundation for scorecard setting and identifies the statutory obligations that form the basis for FHFA's responsibilities as conservator. Fundamentally, these purposes are to:

- Conserve and preserve the assets of the GSEs,
- Advance the mission requirements that continue to govern GSE activities, and
- Facilitate a stable transition to the future state of housing finance.

Second, we discuss the guiding principles that follow from these objectives in the context of setting the 2014 (and subsequent) scorecard for the GSEs' multifamily activities. We emphasize the critical importance of stewardship with regard to existing GSE resources and human capital. Blunt reductions would neither conserve nor preserve taxpayer assets, but would lead to

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[5] FHFA's Conservatorship Priorities for 2013, Remarks Prepared for Delivery by Edward J. DeMarco, Acting Director, FHFA (March 4, 2013).

[6] Federal Housing Finance Agency, "A Strategic Plan for Enterprise Conservatorships: The Next Chapter in a Story that Needs an Ending" (Feb. 21, 2012).

contrary results that jeopardize the strong performance, retention of human capital, and a stable transition to the future of multifamily finance.

The implications of the GSEs' mission purposes — liquidity, stability and affordability — are also examined. Importantly, the GSEs served a counter-cyclical role during the recent downturn, and market forces have been at work to naturally reduce GSE multifamily market share. In this regard, we express a strong preference for market-driven reduction, rather than through regulatory intervention.

Equally important is ensuring a stable transition to the future state of mortgage finance. We emphasize that FHFA should consider scorecard objectives for multifamily that would faciliate transition steps forward, rather than singularly focusing on contraction. The legislative process should be allowed to run its course, and Congress should have the benefit of a broad range of options that comes with assets that have value to taxpayers.

Lastly, we address the practical dimensions and potential unintended consequences of certain multifamily scorecard objectives. Given current market conditions and declining GSE market share, we do not believe that a volume reduction (such as another 10 percent) is warranted for 2014. The range of approaches identified in FHFA's Request raise concerns as well — micromanagement, chipping away at taxpayer value, and diminishing the ability to attract private capital and retain talent going forward.

As alternatives, we recommend an overall "containment" approach combined with an affordability-related directive, as well as an objective that would direct the GSEs to explore additional ways to use private capital to help lay the groundwork for a range of policy solutions that Congress may consider. Both approaches, in our view, would align with conservatorship principles and facilitate a pathway forward.

I. FHFA OBJECTIVES

FHFA's issuance of its February 2012 "Strategic Plan for Enterprise Conservatorships"[7] was pivotal to the ongoing debate on the role of the GSEs. While certain elements of the plan merit further conversation, the Strategic Plan's thoughtful content provided greater transparency and directional guidance to stakeholders and the mortgage finance market overall. We understand that FHFA's subsequent conservatorship scorecards and directives to the GSEs seek to align with the Strategic Plan.

The Strategic Plan identified twin objectives mandated by Congress that govern FHFA's role as conservator, including with regard to its multifamily business lines. Fundamentally, FHFA must act to (1) conserve and preserve, and (2) advance the statutory mission of the GSEs.[8]

Conservatorship

FHFA in its capacity as conservator is to "preserve and conserve" the businesses of the GSEs. Pursuant to the Housing and Economic Recovery Act of 2008 (HERA), FHFA may "take such action as may be (i) necessary to put the regulated entity in a sound and solvent condition; and (ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity."

The Strategic Plan clarifies that "with taxpayers providing the capital supporting Enterprise operations, this 'preserve and conserve' mandate directs FHFA to minimize losses on behalf of

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[7] Federal Housing Finance Agency, "A Strategic Plan for Enterprise Conservatorships: The Next Chapter in a Story that Needs an Ending" (Feb. 21, 2012).

[8] FHFA's 2012 Strategic Plan articulated a third legal obligation that applies only to the GSEs' single-family, not multifamily, activities: "[U]nder the Emergency Economic Stabilization Act of 2008 (EESA), FHFA has a statutory responsibility to 'implement a plan that seeks to maximize assistance for homeowners and use its authority to encourage the servicers of the underlying mortgages, and considering net present value to the taxpayer, to take advance of . . . available programs to minimize foreclosures.'" FHFA Strategic Plan, p. 7.

taxpayers."[9] We understand that FHFA is acting in its capacity as conservator in connection with the Request for Public Input and efforts to set the GSEs' 2014 scorecards.[10]

Mission

FHFA's Strategic Plan identifies an additional obligation: "Although each Enterprise is in conservatorship, without statutory changes their mission of supporting a stable and liquid mortgage market remains the same as before the conservatorships."[11] In this regard, FHFA articulated its statutory responsibility to ensure each GSE "operates in a safe and sound manner" and that "the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets."[12]

The charters of both GSEs, which continue to remain in effect, specify the following mission purposes:

- To provide stability in the secondary market for residential mortgages;
- To respond appropriately to the private capital market;
- To provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and
- To promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investment and improving the distribution of investment capital available for residential mortgage financing.[13]

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[9] FHFA Strategic Plan, p. 7.
[10] FHFA has indicated that the Administrative Procedure Act does not apply to this Request for Public Input.
[11] FHFA Strategic Plan, p. 7.
[12] *Id*.
[13] Fannie Mae Act § 301; Freddie Mac Act § 301(b).

The GSEs' mission — to provide liquidity, stability and affordability to the residential (both single-family and multifamily) mortgage markets — remains, until Congress acts. FHFA, in its current role, has the responsibility of effectuating this mission.

Ensuring A Stable Transition Forward

While not specified by statute, a third, equally important objective is attributable to the obligations above. We believe that steps taken by FHFA should seek to ensure an orderly and stable transition to the future state of housing finance. FHFA has underscored the importance of developing "the mortgage market of the future" as well as "leaving open all options for Congress and the Administration regarding the resolution of the conservatorships and the degree of government involvement in support of the secondary mortgage market in the future."[14]

Ensuring a stable transition forward, in our view, arises from the mandate to conserve and preserve the assets of the GSEs, coupled with a mission objective. In addition to any steps that FHFA may consider to "contract," FHFA may wish to consider steps that would maintain and appropriately enhance the existing multifamily businesses — in order to provide optionality for Congress as it formulates the future of mortgage finance.

II. RECOMMENDED PRINCIPLES

If the obligations above govern FHFA's activities as conservator, a number of implications necessarily follow. The principles below, we submit, should guide FHFA's development of the GSEs' multifamily scorecard.

[14] FHFA Strategic Plan, p. 3, 4.

Stewardship

Stewardship of existing GSE assets and resources on behalf of taxpayers should be a paramount consideration for any FHFA action.[15] The multifamily platforms of the GSEs are valuable to taxpayers — whether in the context of optimizing a financial return for taxpayers through the potential sale of ownership interests and/or ensuring a stable transition to a new legislative regime.

The value of these businesses lies in a number of areas. Both businesses have been profitable and have been exceptionally prudent in their lending practices, as reflected in their credit performance with less than a 20 basis point delinquency rate. The market executions of the GSEs are widely recognized by the capital markets and utilize distinct structures as primary executions. As observed by FHFA, both attract private capital through risk sharing arrangements that assume substantial credit risk positions.

Their infrastructure is essential to the value — and viability — of their businesses. The talent, expertise and intellectual capital of their staff are enormously valuable to the federal government, and the future deployment of these resources should be a core consideration in the transition to the future state. Sudden and significant shifts in business plans (including through FHFA action) place at risk the human capital in the GSEs' multifamily business lines. Another across the board 10 percent decrease in origination volumes, for example, would signal a declining business, and in turn, would risk an exodus of significant talent. Abrupt reductions would neither conserve nor preserve taxpayer assets, and lead to consequences that could jeopardize their strong credit and business performance.

The need for stewardship — as well as the conserve and preserve objectives — extends beyond the offices of the two GSEs. Prudent and disciplined multifamily lending is also driven by strong and reliable business relationships. Among them, the network of multifamily lenders that partner with Fannie Mae and Freddie Mac has been fundamental to their strong performance and liquidity provided to the multifamily housing market. The GSEs rely on these partnerships to operate their businesses and fulfill their core mission. Dramatic reductions or

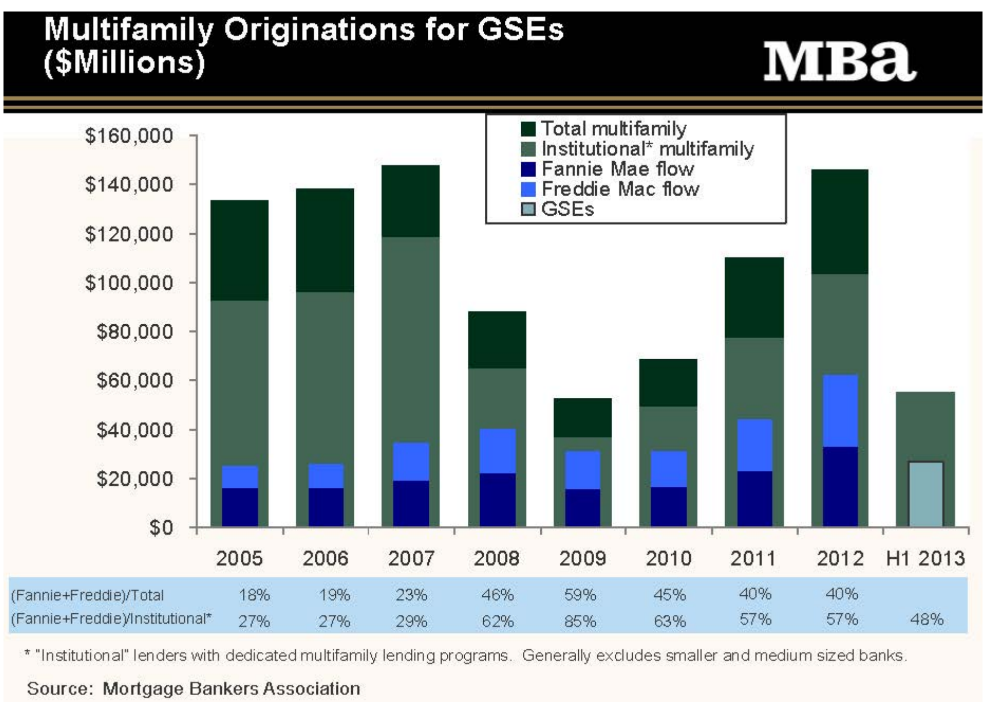
[15] MBA White Paper: "Ensuring Liquidity and Stability: The Future of Multifamily Housing Finance and the Government-Sponsored Enterprises" (Dec. 2012), p. 18-19, available at: http://mba.informz.net/MBA/data/images/whitepapergsemf120412.pdf.

changes in the GSEs' business models would place significant stress on the business relationships that have been vital to the strong performance of both GSE business models. Potential investments in technology and business processes in the lenders' platforms that interface with the GSEs may also be questioned going forward.

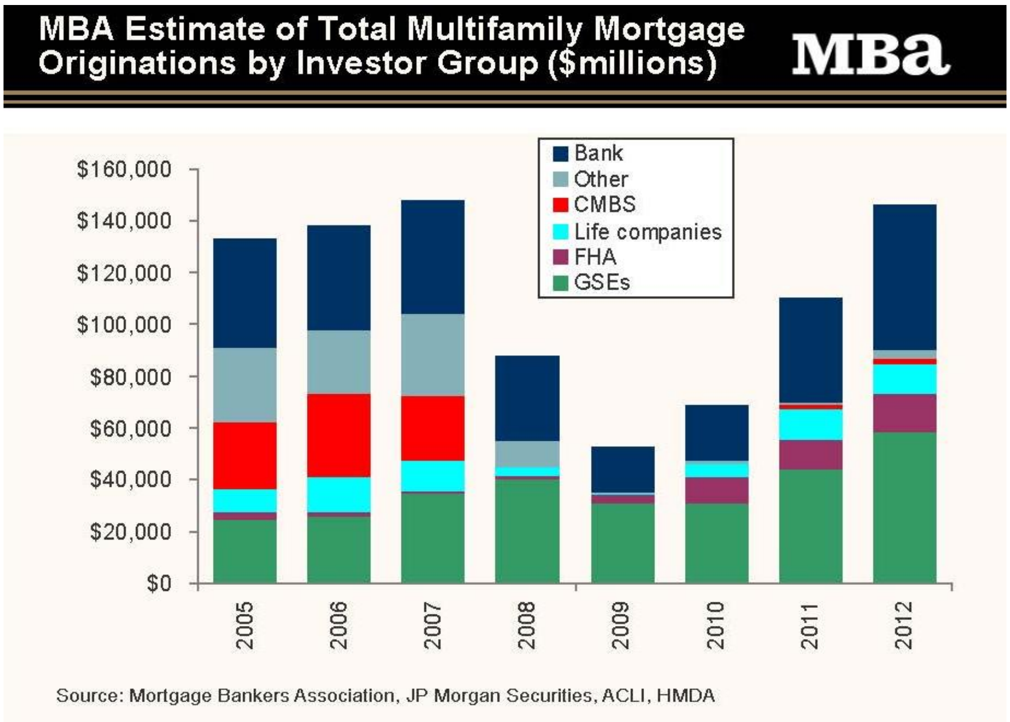
Mission

Congress directed the GSEs to provide liquidity, stability and affordability to the mortgage markets. We believe that any steps FHFA considers taking should align with the GSEs' mission.

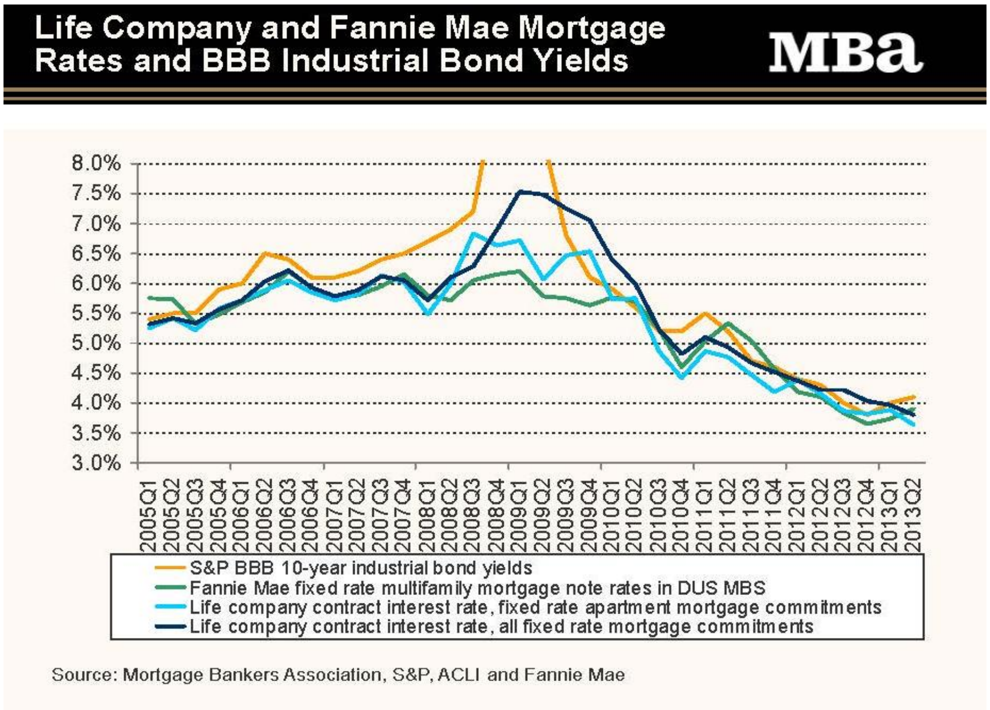
The GSEs' role during the financial crisis demonstrates that they served a countercyclical role as providers of liquidity in the multifamily market when other sources pulled back. The GSEs' peak market share reached 59 percent of the total multifamily mortgage originations (and 85 percent of the institutional market) in 2009. Just as important, since the crisis, their market share has trended downward — in 2012, 40 percent of the total multifamily market and 57 percent of the institutional market — even as overall multifamily origination volumes have increased.



As the market has stabilized, other capital sources have increased market share, with non-GSE capital sources competing vigorously with Fannie Mae and Freddie Mac to finance multifamily properties.



An examination of life company and Fannie Mae mortgage rates, for example, suggests that there is currently strong competition among capital sources in financing multifamily properties.



In sum, market conditions are naturally impacting and reducing GSE market share in multifamily debt. Given this, we believe that FHFA should allow market forces to shape multifamily origination volumes in 2014, rather than through regulatory intervention.

In addition, by virtue of financing multifamily rental housing, the GSEs' support a market that is, by its very nature, affordable. Multifamily rental housing provides affordable housing, with 93 percent of multifamily rental apartments having rents affordable to households earning area median incomes or less. The GSEs have supported the broad affordable rental market for decades. They have also been subject to a number of affordable housing goals regimes over time since 1992. While initially established as percentage-of-business goals across both single-family and multifamily mortgage transactions, since the enactment of HERA in 2008, the GSEs' multifamily activities (measured by unit count) are treated separate from single-family transactions under the newer regime. FHFA has available this mechanism, if it were to determine that additional steps to promote affordability, are warranted. In our recommendations below, we discuss an approach that is aligned with the affordable housing mission of the GSEs.

Stable Transition

While the current state of the GSEs should not last indefinitely, policy makers should ensure the ongoing stewardship of resources that support the multifamily market, utilizing them to transition to a sustainable and vibrant multifamily housing finance system in the future. The resources of the GSEs, as taxpayer assets, should be preserved to support an orderly transition to a new mortgage finance system. FHFA, as previously noted, has recognized the unique features of the multifamily finance market and the GSEs' role therein.[16]

The value in the multifamily platforms should be preserved in order to ensure a stable transition that preserves — and does not foreclose — options for Congress. With the importance of liquidity, stability and affordability in the multifamily housing market, FHFA also should proceed with caution, avoiding risks that come with experimentation. As MBA previously noted:

> We also caution that the multifamily finance market and the role GSEs play should not be viewed as a potential "thought experiment" to test out scenarios for the broader mortgage market. Sudden or dramatic changes, for example, would be highly disruptive and cause harm to the multifamily finance system. While policymakers may wish to continue to explore options on the potential role for standalone multifamily secondary market entities, the *do no harm* principle should govern, particularly in light of the stability and successes of the multifamily market overall.[17]

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[16] "Another difference from the single-family business is that each Enterprise's multifamily business has weathered the housing crisis and generated positive cash flow. In contrast to their common approach to their single-family businesses, Fannie Mae and Freddie Mac do not take the same approach to their multifamily businesses. Each approach also already embeds some type of risk sharing. For a significant portion of its business, Fannie Mae shares multifamily credit risk with loan originators through its delegated underwriting program. For a significant and increasing portion of its business, Freddie Mac shares multifamily credit risk with investors by issuing classes of securities backed by multifamily mortgages where the investor bears the credit risk." FHFA's Conservatorship Priorities for 2013, Remarks Prepared for Delivery by Edward J. DeMarco, Acting Director, FHFA (March 4, 2013).

[17] MBA White Paper: "Ensuring Liquidity and Stability: The Future of Multifamily Housing Finance and the Government-Sponsored Enterprises" (Dec. 2012), p. 20, available at: http://mba.informz.net/MBA/data/images/whitepapergsemf120412.pdf.

Finally, FHFA's scorecard items for the GSEs' multifamily platforms, to date, have been exclusively focused on the theme of "contraction." Other strategic themes that build a stronger foundation to transition to the future state of housing finance should be considered. This, in turn, could motivate staff and help address talent retention issues facing the GSEs. Overall, we believe the legislative process should be allowed to run its course. We have strong concerns about possible actions outside of the legislative process that would diminish the options available to Congress.

III. MULTIFAMILY SCORECARD RECOMMENDATIONS

Given current market conditions and the robust competitive environment among various capital sources in the multifamily debt markets, we do not believe that a volume reduction (such as 10 percent) is warranted for 2014. Across the board cuts in origination volumes (or other similar changes) for a second consecutive year will risk significant loss of human capital at the GSEs and call into question the viability of the multifamily businesses. We appreciate that FHFA is considering a "gradual contraction" and would submit that an additional 10 percent reduction in 2014 would not be gradual.

FHFA requested feedback on a variety of mechanisms to contain the GSE multifamily businesses. We do not believe that the methods listed are proper ways to manage the GSEs' footprint. Just as a blunt volume contraction would have detrimental consequences, so too could a range of approaches identified in FHFA's Request. While the GSEs or FHFA as conservator may choose to consider some of the options identified as part of routine business decisions, we question whether they would be appropriate for a conservatorship scorecard. For example, the GSEs may choose not to offer shorter-term loan products based on business reasons (e.g., market conditions, profitability or credit risk considerations) for a limited period of time; eliminating a product or activity through regulatory action, however, differs greatly. Limiting such activities leads to micromanagement concerns and would chip away at the value of the platforms and ultimately diminish the ability to privately capitalize new entities that could serve the multifamily finance market.

We therefore recommend alternative options.

First, consistent with the "maintain" theme used in FHFA's Strategic Plan, we believe that FHFA could adopt a containment approach to the GSEs' multifamily businesses. The GSEs' could be limited in 2014 to their respective origination volumes in 2013. At the same time, the GSEs could be directed to limit — to a particular percentage of units financed — their support of multifamily properties that may not be considered workforce rental housing. For example, in 2014, FHFA's scorecard could provide that no more than 10 percent of the units financed could exceed 100 percent of area median income. We underscore that any such affordability-related limit must provide flexibility in line with the GSEs' current broad mission, and refrain, for example, from property-specific limits, such as loan limits, that could impede liquidity to the broad multifamily market.

This approach would allow market forces — that are already giving rise to robust competition — to be the primary driver of origination activity, while containing GSE production activity in 2014. The limitation on the number of higher-end properties financed also would address a concern that has been raised by FHFA and others. If a GSE does not meet the target, it would receive no (or partial) performance credit, consistent with FHFA's scorecard assessment procedures. So long as the limit is commercially reasonable, consistent with the need for business and portfolio diversification, and safety and soundness considerations, this approach would align with the GSEs' mission to enhance affordability and "respond appropriately to the private capital market[s]."[18] FHFA, of course, should continue to monitor market conditions and, in the event of a market disruption or liquidity crisis in the multifamily finance market, modify or waive any scorecard limits to address market needs. In addition, if the GSEs' multifamily businesses remain in conservatorship in 2015, we generally recommend a continuation of the overall approach above (absent market disruptions), which would provide greater certainty and stability to GSE multifamily staff, market participants, and the market as a whole.

Second, we encourage FHFA to consider ideas that would prepare them for a stable transition once Congress acts, while conserving the value of the GSE multifamily platforms. Such efforts could help lay the groundwork for a range of policy solutions that Congress may consider. For instance, the GSEs could be directed to explore additional ways to use private capital to reduce their overall exposure, enhance risk management for the multifamily business lines, and explore

[18] Fannie Mae Act § 301; Freddie Mac Act § 301(b).

approaches to attract private capital at the entity level with continued access to a government guarantee.

This approach would leverage the intellectual capital and expertise of the GSEs, help motivate their staff, and faciliate efforts toward a more orderly transition, as greater clarity emerges on policy options considered by Congress. Just as the GSEs' single-family businesses were directed to "build" in order to transition to the future state, multifamily-centric initiatives could be developed that would strengthen steps toward transition, risk management and taxpayer value going forward.

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Thank you for your consideration of our comments. We look forward to engaging in further discussions with FHFA on these important matters. If you have any questions, please contact Thomas Kim, MBA Senior Vice President of Commercial & Multifamily Policy, at tkim@mba.org or Eileen Grey, MBA Associate Vice President of Multifamily, at egrey@mba.org.

Sincerely,

Brian F. Stoffers, CMB
Chairman, MBA Commercial Real Estate/
Multifamily Finance Board of Governors 2013, and
Chairman, MBA GSE Multifamily Task Force