

September xx, 2020

Hon. Mark Calabria  
Director, Federal Housing Finance Agency  
400 7<sup>th</sup> Street SW  
Washington, DC, 20024

Hon. Steven Mnuchin  
Secretary, Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington DC, 20220

Dear Director Calabria and Secretary Mnuchin:

We write as independent mortgage bankers (IMBs) to request critically needed action to make permanent, and as broad as possible, the existing FHFA policy that prohibits Fannie Mae and Freddie Mac (the Enterprises) from engaging in pricing discrimination based on a loan originator's size or loan volume.

An important factor contributing to the Enterprises entering into conservatorship in 2008 was their widespread practice of preferential pricing for the largest - and riskiest - mortgage loan originators, such as Countrywide and WAMU. This took the form of volume discounts on Guarantee Fees (G-Fees) for these mega-lenders – which hurt smaller mortgage lenders and the customers they served.

Under conservatorship, FHFA has commendably prohibited this practice. However, this policy is not incorporated into a specific statutory or regulatory provision, and thus could be changed by a future FHFA Director. Moreover, once the Enterprises exit conservatorship and operate as private entities, they would be incentivized (and likely pressured by the largest lenders) to return to a practice of volume discounts.

Therefore, it is critical for Enterprise regulators to adopt the broadest possible prohibition against pricing and policy discrimination based on lender size or loan volume, making this permanent through:

- (1) **Amendment of the Preferred Stock Purchase Agreements (PSPAs).** The Administration's September 2019 ["Housing Reform Plan"](#) recommends amending the PSPAs, governing capital support of the Enterprise, to accomplish policy goals, including requiring each GSE *"to maintain a nationwide cash window and provide equitable secondary market access to all lenders."*
- (2) **Adoption of a rule prohibiting Enterprise pricing and policy discrimination based on a lender's size or volume.** Legal authority and policy justification for this can be found in charter provisions and The Federal Housing Enterprises Financial Safety and Soundness Act of 1992.<sup>1</sup>

A prohibition against pricing discrimination based on size or loan volume should be broad, and include:

- G-Fees and LLPAs pursuant to cash window pricing.
- Securitization pricing, including buy-up/buy-down grids.
- Private Mortgage Insurance (PMI), both lender- and borrower paid, as part of an Enterprise loan.
- Any proxies for pricing discrimination that accomplish the same goal.

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<sup>1</sup> Legal authority for such actions can be derived from both the Enterprises' charters and statutory authority, including:

- (1) Enterprise statutory public purpose requirements include promoting *"access to mortgage credit throughout the nation,"* by *"... improving the distribution of investment capital available for residential mortgage financing."* Prohibiting discrimination against smaller lenders promotes access to mortgage credit by expanding the number of loan originators.
- (2) Similarly, the principal duties of the FHFA Director, in Sec. 1313(a) of the 1992 Act (as amended by the 2008 HERA legislation) include fostering *"liquid, efficient, competitive and resilient national housing finance markets. . . consistent with the public interest."*
- (3) Prudential management and operations standards under Section 1313(B)(a) of the 1992 Act include *"management of credit and counterparty risk, including... limits to restrict exposure... to a single counterparty or groups of related counterparties."* Prohibiting pricing discrimination based on lender size or volume promotes this objective by deterring market domination by a small number of larger lenders, as occurred in the years leading up to 2008.

Private mortgage insurance (PMI) should **not** be exempt from non-discrimination requirements, as it is an integral part of the underlying Enterprise loan and statutorily required when the loan-to-value exceeds 80%. PMI pricing discrimination has the same pernicious impact as G-Fee pricing discrimination.

Additionally, the Enterprises should not be allowed to discriminate based on size or loan volume with respect to important Enterprise loan policies, including:

- DU/LP Waivers (where one Enterprise agrees to purchase loans that meet the other's standards).
- Repurchase Policies (where lenders bear responsibility for improperly underwritten loans).
- Use of Pilot programs that are only available to a single or few large lenders.

**The principle is the same: discrimination based on size or loan volume is bad for mortgage market competition, bad for smaller mortgage lenders, and bad for the consumers small lenders serve.**

Thank you for your consideration of these recommendations.

Sincerely,