



August 31, 2020

Filed to FHFA website

Alfred M. Pollard, Esq.
General Counsel
Attention: Comments/RIN 2590-AA95
Federal Housing Finance Agency
Eighth Floor
400 Seventh Street, SW
Washington, DC 20219

Re: Notice of Proposed Rulemaking on Enterprise Capital Requirements

Dear Mr. Pollard:

The National Multifamily Housing Council (“NMHC”) and National Apartment Association (“NAA”) appreciate the opportunity to comment on the notice of proposed rulemaking on Enterprise Capital Requirements (“Proposed Rule”) published in the *Federal Register* by the Federal Housing Finance Agency (“FHFA”) on June 30, 2020.¹ This notice of proposed rulemaking is a re-proposal of the Enterprise Capital Requirements notice of proposed rulemaking published by FHFA in 2018 (the “2018 FHFA Proposal”).² NMHC and NAA filed comments on the 2018 FHFA Proposal.

For more than 20 years, NMHC and NAA have partnered on behalf of America’s apartment industry. Drawing on the knowledge and policy expertise of professional staff in Washington, DC, as well as the advocacy power of more than 160 NAA state and local affiliated associations, NMHC and NAA provide a single voice for developers, owners and operators of multifamily rental housing.

NMHC and NAA believe that the continuous availability of appropriately priced financing under both Fannie Mae and Freddie Mac’s (the “Enterprises”) multifamily programs is essential to enable the nation’s apartment industry to meet the country’s growing need for apartment housing.³ It is critical, therefore, that FHFA adopt a final rule on Enterprise Capital Requirements that is properly calibrated to the risks of each Enterprise’s multifamily program.

¹ 85 Fed. Reg. 39274 (June 30, 2020).

² 83 Fed. Reg. 33312 (July 17, 2018).

³ See NMHC and NAA Letter Regarding Enterprise Capital Requirements; Comments on RIN 2590-AA95 (Nov. 16, 2018), available at <https://www.gpo.gov/fdsys/pkg/FR-2018-07-17/pdf/2018-14255.pdf>.

The stated purpose of the Proposed Rule is to establish a new regulatory capital framework for the Enterprises during and after their conservatorships that ensures each Enterprise operates in a safe and sound manner and facilitates the Enterprises' fulfillment of their statutory mission to provide stability and ongoing assistance to the secondary mortgage market across good and bad economic cycles.⁴

FHFA developed the Proposed Rule with the intent to preserve and refine the mortgage risk-sensitive aspects of the 2018 FHFA Proposal, to increase the quality and quantity of the Enterprises' capital both during and after their conservatorships and to address the pro-cyclicality of the risk-based capital requirements of the 2018 FHFA Proposal.

NMHC and NAA support the overarching purpose for the new regulatory capital framework for the Enterprises. We agree that the Enterprises' regulatory capital framework should maintain safety and soundness and enable the Enterprises to fulfill their mission across all economic cycles. We believe, however, that the Proposed Rule needs several important revisions and recalibrations to avoid harming the liquidity, stability and affordability of the multifamily housing market.

NMHC and NAA provided extensive, substantive comments on the 2018 FHFA Proposal.⁵ Our comments described the principles we believe FHFA should apply in amending the Enterprises' regulatory capital requirements and made specific recommendations to ensure the continued availability of multifamily financing at an appropriate cost. We were disappointed that FHFA neither integrated our comments into the Proposed Rule nor articulated any basis for not doing so. We would expect FHFA to adhere to all administrative rulemaking mandates as it promulgates the final rule on Enterprise Capital Requirements, including by considering and responding to all significant comments. We submit that our comments on the 2018 FHFA Proposal remain relevant and should be integrated into the Proposed Rule.

Our comments on the Proposed Rule describe the key principles NMHC and NAA believe FHFA should incorporate into the Enterprises' regulatory capital framework and our principal concerns and recommendations for revisions to the Proposed Rule in summary and more detailed forms. Our recommended revisions will achieve the stated purpose for the Proposed Rule while preserving the market utility of the Enterprises' multifamily housing programs and their beneficial effects for financing the country's apartment housing.

⁴ 85 Fed. Reg. at 39275.

⁵ See NMHC and NAA Letter Regarding Enterprise Capital Requirements; Comments on RIN 2590-AA95 (Nov. 16, 2018), available at <https://www.gpo.gov/fdsys/pkg/FR-2018-07-17/pdf/2018-14255.pdf>.

I. KEY PRINCIPLES

NMHC and NAA believe that the regulatory capital framework applicable to the Enterprises' multifamily programs should retain the successful components of the Enterprises' existing multifamily programs to preserve the continuous availability of appropriately priced multifamily financing and avoid causing detrimental market impacts. As we indicated in our comment letter on the 2018 FHFA Proposal, we recommend that FHFA amend the Enterprises' regulatory capital framework in accordance with three key principles:

1. Consistency with maintaining an explicit federal guarantee for multifamily mortgage-backed securities.
2. Recognition of the unique multifamily risk management characteristics of the Enterprises' multifamily businesses, which differ from their single-family businesses.
3. Maintenance of the differences between the risk-sharing executions of each Enterprise without advantaging one Enterprise over the other.

Regulatory capital amendments that conform to these principles would promote the Enterprises' role in a liquid, efficient, competitive and resilient multifamily housing market while avoiding unintended adverse consequences.

II. PRINCIPAL CONCERNS AND SUMMARY RECOMMENDATIONS

The stated purpose of the Proposed Rule is to enhance the Enterprises' regulatory capital framework to ensure safety and soundness and continue the Enterprises' ability to fulfill their statutory mission of providing stability, liquidity and affordability to the mortgage market across good and bad economic cycles.⁶ While the 2018 FHFA Proposal serves as the foundation of the Proposed Rule, the Proposed Rule would augment the 2018 FHFA Proposal in several ways.

Among other changes, the Proposed Rule would alter the capital treatment of credit risk transfer ("CRT") structures, including a minimum capital requirement on senior tranches of CRT structures retained by an Enterprise and an adjustment to reflect that CRT do not have the same loss-absorbing capacity as equity capital. The Proposed Rule is intended to simplify the lookup grids and risk multipliers. The Proposed Rule would also supplement capital requirements based on the framework for banks adopted by the Basel Committee on Banking Supervision ("Basel Committee"). Further, the Proposed Rule would revise the method for determining operational risk capital requirements, including setting a higher floor.

⁶ 85 Fed. Reg. at 39275.

NMHC and NAA agree with FHFA that the 2018 FHFA Proposal should be carefully amended to achieve the objectives of ensuring the Enterprises' safe and sound operations and ability to fulfill their missions during and after the end of the conservatorships. However, we believe the Proposed Rule would have significant negative impacts on the multifamily housing market if FHFA adopts the Proposed Rule without changes.

Our principal concerns and summary recommendations for changes to the Proposed Rule are set forth below. We believe that FHFA must engage in a deliberate, thoughtful rulemaking process that carries out these recommendations.

1. Concern: The prudential floor for CRT in the Proposed Rule will have a detrimental impact on pricing, capital and business models in the multifamily housing market.

Recommendations:

- *FHFA should abandon the CRT prudential floor for multifamily altogether as its current treatment could undermine the Enterprises' business models.*
- *FHA and the Enterprises should conduct an impact analysis on the impact that the CRT prudential floor will have on the Enterprises' risk management policies and procedures, their business models as a whole and existing CRT programs.*

2. Concern: The Proposed Rule provides insufficient information regarding the derivation of the lookup grids and risk multipliers applicable to multifamily mortgage exposures.

Recommendations:

- *We recommend that FHFA provide more information on the derivation of the lookup grids and risk multipliers, including the data set on which FHFA relied. The Proposed Rule does not provide sufficient information to conduct a sound analysis of the derivation of the proposed lookup grids and risk multipliers for multifamily mortgage exposures.*
- *Providing this information is important because to the extent that the data set FHFA used relies on unrepresentative or otherwise incorrect data, the Enterprises could be required to hold capital beyond what would be necessary to maintain the Enterprises' safety and soundness and enable them to fulfill their mission. This has the potential to have a significant negative impact on the availability of multifamily financing.*

3. Concern: The lookup grids and risk multipliers applicable to multifamily housing would undermine the affordable and workforce housing markets and the Enterprises' related initiatives.

Recommendation:

- *Affordable and workforce housing (“WFH”) are fundamental components of the Enterprises’ statutory mission and business models. The treatment of multifamily mortgage exposures with higher mark-to-market-loan-to-value (“MTMLTV”) and lower debt-service-coverage (“DSC”) ratios will result in a significant amount of capital held against WFH. We recommend that FHFA reconsider and recalibrate the lookup grid and risk multipliers to avoid adverse impacts on the market for WFH.*

4. Concern: The lookup grid in the Proposed Rule would require the Enterprises to hold significantly more capital against multifamily housing exposures than the capital a bank must hold against the same exposure under the Basel and U.S. bank capital framework contrary to FHFA’s expressed intent to base the Proposed Rule on the bank framework.

Recommendation:

- *FHFA should adopt a regulatory capital framework for the Enterprises that applies to their unique business models rather than forcing the capital framework for banks onto the Enterprises’ business models. The bank capital framework was designed to address the unique nature of the business of banking and is ill-suited to the Enterprises’ distinct business models. Forcing the capital framework for banks onto the Enterprises risks adopting a capital framework that negatively impacts the multifamily housing market. In fact, when compared to the treatment of multifamily exposures under the Basel and U.S. bank capital framework, the Proposed Rule would require the Enterprises, under certain circumstances, to hold significantly more capital against multifamily exposures than banks hold.*

5. Concern: The Proposed Rule does not address the pro-cyclicality of the multifamily housing market.

Recommendation:

- *FHFA should implement measures to address the pro-cyclicality of the multifamily housing market. We believe that countercyclical adjustments for multifamily mortgage exposures’ MTMLTV must be implemented in the Proposed Rule. This adjustment should only be made where the overall value of the Enterprises’ multifamily mortgage exposure fluctuates by a certain percentage, and should not be based on an index. In addition, FHFA could further mitigate cyclicality by using loan-to-value ratios at origination, not a market-to-market metric, or a collar on mark-to-market values.*

6. Concern: The Proposed Rule fosters incongruent treatment of multifamily and single-family housing.

Recommendations:

- *FHFA should carefully examine those situations in which multifamily mortgage exposures are treated differently than single-family exposures and eliminate any differences that serve to materially disadvantage multifamily exposures. Careful examination would help ensure that the Enterprises' regulatory capital framework better reflects the unique risk management characteristics and demonstrated credit performance of the multifamily businesses as compared to the single-family businesses.*
- *FHFA should provide greater transparency regarding the data underlying the Proposed Rule, and in particular, FHFA should provide the analytical approach it employed that results in a risk capital treatment for multifamily that is 2x that for single-family. Historic and recent loss experience do not support FHFA's position.*

7. Concern: The leverage ratio requirements may be the predominant binding capital requirements, overshadowing the risk-based capital requirements.

Recommendations:

- *The proposed leverage ratio requirements exceed the risk-based capital requirements, as demonstrated for the third quarter of 2019, but it is unclear if this is the binding constraint over a time series. We recommend that FHFA carefully calibrate the leverage ratio requirements to avoid establishing a regulatory capital framework in which the leverage ratio requirements are the binding capital mandate overshadowing the risk-based capital requirements.*
- *FHFA should provide more information on the derivation of the proposed leverage ratio requirements including the data set on which FHFA relied. FHFA should also run a time-series of capital requirements and not just on the single data point provided in the Proposed Rule. Providing this data set would provide transparency to the rulemaking process, enabling NMHC and NAA to offer more specific comments.*

8. Concern: The Proposed Rule fails to properly address differences in the Enterprises' multifamily business models.

Recommendation:

- *FHFA should take steps to provide greater capital credit to Fannie Mae, for multifamily exposures recognizing that, according to FHFA, “Fannie Mae has used loss-sharing transactions through a delegated underwriting system which has produced low losses since it was first offered in 1988”⁷ but has been required to hold a larger amount capital relative to Freddie Mac.*

The rest of our letter provides a comprehensive explanation of the reasoning behind each of our concerns and recommendations in the same order they are described above.

III. EXPLANATION OF OUR CONCERNS AND RECOMMENDATIONS

1. The prudential floor for CRT in the Proposed Rule will have a detrimental impact on pricing, capital and business models in the multifamily housing market.

The Proposed Rule would introduce a prudential floor of 10 percent for the risk weight assigned to each tranche in a CRT transaction. FHFA believes this floor would “mitigate potential risks associated with a CRT, including the structuring, recourse, and other risks associated with these securitizations.”⁸

The Proposed Rule requests comments on the treatment of CRT under the Proposed Rule, including whether the 10 percent prudential floor is properly calibrated and whether a different approach should be taken.⁹ We believe that the prudential floor is not properly calibrated. FHFA should take a different approach that does not involve the prudential floor for several reasons.

First, the Proposed Rule provides insufficient justification for a 10 percent floor, stating only that the floor is “less than the 20 percent minimum risk weight under the US banking framework for securitization exposures.”¹⁰ This absence of foundational information for the proposed floor significantly inhibits our ability to offer granular comments and raises questions about the basis for the proposed floor.

Second, the Proposed Rule would apply a blanket CRT prudential floor without giving due consideration to the differences between single-family CRT and the more robust and well-developed multifamily CRT. The Proposed Rule generally ignores the significant support provided by the involvement of the private market and the mortgage market generally in transferring risk

⁷ See Fannie Mae & Freddie Mac Multifamily Businesses, *available at* <https://www.fhfa.gov/Policy/ProgramsResearch/Policy/Pages/Reducing-Fannie-Mac—Freddie-Mac-Multifamily-Businesses.aspx>, last accessed on August 30, 2020.

⁸ 85 Fed. Reg. at 39322.

⁹ *Id.* at 39331.

¹⁰ *Id.*

from the Enterprises.¹¹ We recommend that FHFA acknowledge and incorporate the unique multifamily risk management characteristics of the Enterprises' multifamily business models as compared to their single-family business models into the Proposed Rule before it is finalized.

The prudential floor will also have numerous detrimental effects on the multifamily housing market. The introduction of the CRT floor for multifamily mortgage exposures may change the Enterprises' risk management policies and procedures and their business models. FHFA should conduct an impact analysis to determine the Proposed Rule's impact on the Enterprises' business models and require the Enterprises to provide an evaluation of the potential impact on how they manage their existing CRT programs. It is important to note that the existing multifamily CRT programs used by each Enterprise are well developed, vetted and resulted in no cost to taxpayers during the 2008 financial crisis. Should the CRT floor result in a change on the use of CRT for multifamily mortgage exposures, current and future involvement of the private market in CRT will be curtailed and the Enterprises are likely to experience a significant increase in risk.

2. The Proposed Rule provides insufficient information regarding the derivation of the lookup grids and risk multipliers applicable to multifamily mortgage exposures.

The Proposed Rule requires the use of lookup grids and multipliers when assigning credit risk-weighted assets for multifamily mortgage exposures. NMHC and NAA filed comments on the multifamily credit risk grid and multipliers in the 2018 FHFA Proposal; however, FHFA neither integrated our comments into the Proposal Rule nor provided any indication that our comments were considered. The Proposed Rule offers no analytical support on the derivation of the grids and multipliers or their calibration, which were largely left unchanged from the versions included in the 2018 FHFA Proposal. The absence of analytical support significantly inhibits our ability to comment on the Proposed Rule and calls into question the basis for the proposal.

The Proposed Rule requests comments on whether the risk weights and multipliers for multifamily mortgage exposures are properly calibrated and whether there are any adjustments, simplifications or refinements that should be considered.¹² However, the Proposed Rule does not provide sufficient information to conduct a sound analysis of the derivation of the proposed lookup grids and risk multipliers for multifamily mortgage exposures. Providing this information is important to a proper rulemaking process. To the extent that the data set FHFA used relies on unrepresentative or incorrect data, the Enterprises could be required to hold capital beyond what would be necessary to maintain the Enterprises' safety and soundness and enable them to fulfill their mission. This has the potential to have a significant negative impact on the multifamily housing market.

¹¹ See Hearing on Housing Finance Policy Before the House Financial Services Committee, 116th Cong. (Oct. 22, 2019) (Statement of Steven Mnuchin, Secretary of the Treasury); Prepared Remarks of Dr. Mark A. Calabria, Director of FHFA at MBA 2019 Annual Convention & Expo (Oct. 28, 2019); Remarks before the American Enterprise Institute, *A Case for Housing Finance Reform*, Jerome Powell, Chairman of the Board of Governors of the Federal Reserve System (Jul. 6, 2017).

¹² 85 Fed. Reg. at 39324 and 39327.

3. The lookup grids and risk multipliers applicable to multifamily housing would undermine the affordable and workforce housing markets and the Enterprises' related initiatives.

As stated previously, the Proposed Rule requests comments on whether the risk weights and multipliers for multifamily mortgage exposures are properly calibrated and whether there are any adjustments, simplifications or refinements that should be considered.¹³ Under the Proposed Rule, the capital requirements that would apply to multifamily housing exposures would have a significant negative impact on higher MTMLTV and lower DSC loans, including workforce and affordable housing (“WFH”) loans. For numerous fixed-rate and adjustable-rate mortgages, the Enterprises would be required to hold more than 150 percent capital against certain WFH loans with a DSC ratio below 1.36 and a MTMLTV ratio of 70% or more. The capital requirements could be increased further upon application of the multipliers.

WFH is an essential part of the Enterprises’ businesses, helping the Enterprises fulfill their statutory missions and the annual multifamily affordable housing goals set by FHFA rules pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.¹⁴ Separate from the mission and regulatory mandates for WFH, as conservator of the Enterprises, FHFA has required the Enterprises to explore opportunities to further support liquidity in multifamily WFH.¹⁵

FHFA must engage in a more tailored approach to the capital treatment of multifamily WFH to avoid undermining the Enterprises’ mission to promote WFH and adversely affecting the markets for WFH. The 2018 FHFA Proposal provided a 0.6 risk based multiplier for Government Subsidized loans (Low-Income Housing Tax Credits (“LIHTC”) and Section 8), yet this multiplier is absent in the Proposed Rule. It is unclear whether this result was oversight or an advertent decision. If FHFA intended this result, it should disclose the basis, including new data, that supports eliminating this multiplier. The CohnReznick LLP¹⁶ annual study of the LIHTC market, *Housing Tax Credit Investments: Investments and Operational Performance*, found that the foreclosure rate of LIHTC properties since 2000 was less than 0.1% per year and that the cumulative foreclosures during that time was 0.65%. This performance is significantly better than the conventional marketplace.

¹³ *Id.*

¹⁴ 12 C.F.R. Part 1282; 83 Fed. Reg. 5878 (Feb. 12, 2018).

¹⁵ See FHFA, *2018 Scorecard for Fannie Mae, Freddie Mac, and Common Securitization Solutions* (Dec. 2017), available at <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2018-Scorecard-12212017.pdf>.

¹⁶ CohnReznick, *Housing Tax Credit Investments: Investment and Operational Performance* (Nov. 18, 2019).

4. The lookup grid in the Proposed Rule would require the Enterprises to hold significantly more capital against multifamily housing exposures than the capital a bank must hold against the same exposure under the Basel and U.S. bank capital framework contrary to FHFA's expressed intent to base the Proposed Rule on the bank framework.

The Proposed Rule would force bank capital requirements developed for banks' business models onto the capital framework for the Enterprises' business models. The Proposed Rule requests comments on whether the U.S. banking framework should be used for purposes of the Enterprises' capital requirements.¹⁷ NMHC and NAA believe that this retrofit of the Basel and U.S. bank regulatory capital framework is inappropriate for the Enterprises' unique business models.

The Basel capital standards were created for the largest and most complex international financial institutions. The nature of these banks' businesses, balance sheets, funding and credit risk is materially different from the multifamily financing businesses of the Enterprises. In addition, banks have deposits that can be subject to fluctuation, the Enterprises are match-term funded which makes the models far more predictable than that of banks.

Moreover, while the Basel capital standards may be fully vetted and widely accepted for the largest international banking institutions, the application of these capital standards to the Enterprises' multifamily businesses is inappropriate, unexamined and potentially detrimental. The application of bank capital standards to businesses for which they was not designed or intended to apply should be examined more broadly, including by soliciting input from the Basel Committee and the U.S. bank regulators. Their input would enable FHFA to limit potential unintended consequences and properly tailor the Proposed Rule to reflect the important role the Enterprises play in America's housing market. Even minor missteps in this regard can have significant impacts on the multifamily housing market, with resulting harm to families that are least able to sustain any adverse availability and cost impacts.

The Proposed Rule would require the Enterprises to maintain risk-weighted capital and adjusted capital ratios of 8 percent of risk-weighted assets. The risk weight assigned to multifamily exposures would be dependent on the MTMLTV and DSC ratios outlined in the proposed risk grids. This approach is inconsistent with the bank capital framework because the Enterprises may be required to hold greater capital against multifamily exposures than is necessary to maintain safety and soundness and enable the Enterprises to fulfill their mission.

Additionally, the risk weights under the Proposed Rule are significantly higher than those applicable to the same exposures under the bank capital framework. Certain risk weights provided in the lookup grid in the Proposed Rule can substantially exceed 100 percent and may be as high as 255 percent for adjustable rate mortgages with a DSC ratio greater than 1.00 or more and a

¹⁷ See, e.g., 85 Fed. Reg. at 39301.

MTMLTV of more than 100%. The Basel and U.S. capital framework assign a 100 percent risk weight to multifamily loans at origination, and a 50 percent risk weight one year after origination if there is evidence of timely principal and interest payments and if the loan meets specific credit criteria.¹⁸

Further, the mark-to-market requirement in the Proposed Rule would be more stringent than the bank capital regime. Banks are not required to use mark-to-market metrics for multifamily exposures. Rather, banks are required to review the loan value only at origination when generating capital calculations. The mark-to-market requirement in the Proposed Rule would necessitate a significantly higher capital charge for multifamily mortgage exposures during adverse market conditions, even where the loan is performing.

5. The Proposed Rule does not address the pro-cyclicality of the multifamily housing market.

The Proposed Rule purports to address the pro-cyclicality of the risk-based capital requirements of the 2018 FHFA Proposal, however, the Proposed Rule focuses primarily on single-family housing and not on multifamily housing. For example, the Proposed Rule includes a countercyclical adjustment for each single-family mortgage exposure's MTMLTV ratio when national housing prices are 5.0 percent above or below the inflation-adjusted long-term trend. The Proposed Rule provides no such adjustment for multifamily housing, which runs counter to the expressed goal of FHFA.

The Proposed Rule requests comments on the approach that should be taken to mitigate pro-cyclicality of credit risk capital requirements for multifamily mortgage exposures.¹⁹ Without a clearer understanding of the treatment of single-family and multifamily mortgage exposures, we must withhold specific recommendations, and instead note that FHFA could take a myriad of approaches to address pro-cyclicality in the multifamily housing market. For example, the countercyclical adjustment applicable to single-family exposures could be applied to multifamily exposures. However, we believe that the Proposed Rule should be modified to eliminate the use of FHFA's U.S. all-transactions house price index. Countercyclical adjustments should only be made when the value of the Enterprise's portfolio increases or decreases by a certain percentage.

Further, we also suggest that FHFA evaluate the elimination of the use of MTMLTV in exchange for the loan-to-value ratio at the time of origination. FHFA could also cap mark-to-market values or permit decreases in mark to market values to limit pro-cyclicality in the multifamily housing market.

¹⁸ See, e.g., 12 C.F.R. § 324.32(i).

¹⁹ 85 Fed. Reg. at 39324.

6. The Proposed Rule fosters incongruent treatment of multifamily and single-family housing.

The Proposed Rule requests comments on whether the methodologies used to calibrate credit risk capital requirements for multifamily mortgage exposures are appropriate given the potential risk of loss that could be experienced in a financial crisis and where any changes should be made in calibrating credit risk capital requirements.²⁰ The Proposed Rule would require greater capital for multifamily exposures than for comparable single-family exposures. This is a significant change in policy that lacks proper justification or discussion through rulemaking or stakeholder engagement. NMHC and NAA recommend that FHFA conduct separate analyses of the single-family and multifamily frameworks, to prevent any unintended influence of one framework on the other and to best reflect the unique risk management characteristics and demonstrated credit performance of the multifamily businesses as compared to the single-family businesses.

The Proposed Rule fails to address the pro-cyclicality of multifamily mortgage exposures, despite creating countercyclical adjustments for single-family exposures. If adopted without change, the Proposed Rule would require additional capital to be held against multifamily exposures as compared to single-family exposures. Although this would diminish the availability and cost of multifamily housing, the Proposed Rule does not provide any explanation or justification for this difference in treatment.

As of September 30, 2019, under the Proposed Rule's standardized approach, the Enterprises' average risk weight for single-family mortgage exposures would have been 26 percent, and the Enterprises' average risk weight for multifamily mortgage exposures would have been 51 percent. This difference leaves multifamily exposures at a distinct disadvantage in the mortgage marketplace. The 2018 FHFA Proposal viewed this inconsistent result as a problem, but instead of providing a remedy, the new Proposed Rule continues the problem, does not provide a remedy and fails to provide a rationale for the different treatment. In the absence of any explanation of the rationale for the inconsistent treatment of multifamily and single-family exposures, we are offering comments on the proposed result.

7. The leverage ratio requirements may be the predominant binding capital requirements, overshadowing the risk-based capital requirements.

The Proposed Rule states that FHFA views the leverage ratio requirements as "a credible backstop to the risk-based capital requirements."²¹ Since FHFA intends that the leverage ratio requirements would backstop the risk-based capital requirements, one would expect that the Enterprises' risk-based capital requirements would exceed the supplemental leverage ratio requirements most of the time. However, the leverage ratio requirements in the Proposed Rule

²⁰ *Id.* at 39322.

²¹ *Id.* at 39281.

would exceed the risk-based capital requirements currently, as FHFA acknowledges, and it is not at all clear when this result may change in the future. The Proposed Rule requests comments on whether the leverage ratio is appropriately sized to serve as a credible backstop to risk-based capital requirements and whether the leverage ratio should be based on a metric other than adjusted total assets.²²

NMHC and NAA believe that FHFA should carefully calibrate the leverage ratio requirements to avoid establishing a regulatory capital framework in which the leverage ratio requirements are the binding capital mandate overshadowing the risk-based capital requirements in most circumstances. Our views are aligned with FHFA's stated intent, but the Proposed Rule falls short in implementing the proper calibration. FHFA should calibrate the leverage ratio requirements to avoid the leverage ratio becoming the dominant, binding capital requirement for the Enterprises.

To accomplish this, we recommend that FHFA provide foundational information on the derivation of the proposed leverage ratio requirements, including the data set on which FHFA relied. FHFA should also run a time-series of capital requirements using different scenarios. Relying only on the single data point provided in the Proposed Rule is insufficient. Providing this data set would provide transparency to the rulemaking process, enabling NMHC and NAA to offer more specific comments to assist in achieving our shared objective of having the leverage ratio requirements backstop the risk-based capital requirements.

8. The Proposed Rule fails to properly address the differences in the Enterprises' multifamily business models.

The Proposed Rule states that the Enterprises' regulatory capital frameworks account for differences in the Enterprises' multifamily business models, where appropriate,²³ but the Proposed Rule does not accomplish this. The foundation of Fannie Mae's multifamily business model is a Delegated Underwriting and Servicing program with common underwriting and servicing guidelines for a defined group of multifamily lenders. By contrast, Freddie Mac's multifamily business model is a structured, multi-class securitization program in which K-Deals are the largest securitization program.

Due to these differences in the Enterprises' multifamily business models, the Proposed Rule would require Fannie Mae to hold significantly more capital than Freddie Mac. However, FHFA continues to recognize that "Fannie Mae has used loss-sharing transactions through a delegated underwriting system which has produced low losses since it was first offered in 1988"²⁴ and historically, FHFA has provided greater capital credit to Fannie Mae holdings for this reason.

²² *Id.* at 39295.

²³ *Id.* at 39321.

²⁴ See FHFA, Fannie Mae & Freddie Mac Multifamily Businesses, available at <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Pages/Reducing-Fannie-Mae--Freddie-Mac-Multifamily-Businesses.aspx> (last accessed on August 16, 2020).

Although the Proposed Rule purports to account appropriately for differences in the Enterprises' multifamily business models, and highlights CRT as an example of these differences, the Proposed Rule instead fails to account properly for the fundamental differences in the Enterprises' multifamily businesses. If adopted without change, the Proposed Rule would cause Fannie Mae to hold substantially greater capital than Freddie Mac due to these differences.

The Delegated Underwriting and Servicing Peer Group has indicated that the Proposed Rule would require Fannie Mae to hold more capital than Freddie Mac due in large part to the size and scope of CRT relative to Freddie Mac,²⁵ and we agree. NMHC and NAA recommend that FHFA amend the Proposed Rule to ensure greater capital credit for Fannie Mae's multifamily business thereby assuring fairer competition between the Enterprises.

* * *

²⁵ The Delegated Underwriting and Servicing ("DUS") Peer Group Letter Regarding (RIN) 2590-AA95 FHFA Proposed Rule on Enterprise Capital Requirements (Nov. 16, 2018), *available at* <https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Comment-Detail.aspx?CommentId=15284>.

NMHC and NAA thank FHFA for the opportunity to provide these comments on the Proposed Rule. We agree with FHFA that the Enterprises' regulatory capital framework should maintain safety and soundness and enable the Enterprises to fulfill their mission across all economic cycles. We believe, however, that the Proposed Rule must be revised to accomplish this goal. Our comments recommend several important revisions and recalibrations to avoid harming the liquidity, stability and affordability of the multifamily housing market.

NMHC and NAA believe that FHFA should revise the regulatory capital framework applicable to the Enterprises' multifamily programs in accordance with three key principles:

1. Consistency with maintaining an explicit federal guarantee for multifamily mortgage-backed securities.
2. In recognition of the unique multifamily risk management characteristics of the multifamily business compared to the single-family business and the differences between the Enterprises' risk-sharing executions.
3. Retention of the successful components of the Enterprises' existing multifamily programs.

Regulatory capital amendments that conform to these principles would promote the Enterprises' role in a liquid, efficient, competitive and resilient multifamily housing market while avoiding unintended adverse consequences.

We would welcome the opportunity to discuss our comments. If you have any questions or if you would like to discuss our comments, please contact David Borsos, Vice President, Capital Markets at NMHC by telephone at 202-974-2336 or by email at dborsos@nmhc.org.

Sincerely,



Doug Bibby
President
National Multifamily Housing Council



Robert Pinnegar, CAE
President & CEO
National Apartment Association