



November 26, 2021

Clinton Jones
General Counsel
Attention: Comments/RIN 2590-AB17
Federal Housing Finance Agency
400 Seventh Street, SW
Washington, DC 20219

Re: Notice of Proposed Rulemaking on Amendments to the Enterprise Regulatory Capital Framework Rule – Prescribed Leverage Buffer Amount and Credit Risk Transfer

Dear Mr. Jones:

The National Multifamily Housing Council (“NMHC”) and National Apartment Association (“NAA”) appreciate the opportunity to comment on the Federal Housing Financial Agency’s (“FHFA”) proposed *Amendment to the Enterprise Regulatory Capital Framework Rule* (“Proposed Rule”) for Fannie Mae, and Freddie Mac (the “Enterprises”).

For more than 25 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered on behalf of America's apartment industry. Drawing on the knowledge and policy expertise of staff in Washington, D.C., as well as the advocacy power of more than 155 NAA state and local affiliated associations. NAA and NMHC provide a single voice for developers, owners and operators of multifamily rental housing.

The apartment industry today plays a critical role in housing this nation's households by providing apartment homes to 40.1 million residents, contributing \$3.4 trillion annually to the economy while supporting 17.5 million jobs.¹ At the same time, it is apparent that the supply of multifamily housing is insufficient to meet the nation's housing needs. Moreover, the COVID-19 pandemic has laid bare the fragility of our housing infrastructure. Home should be a respite, and yet 2020 and 2021 have found many households challenged by a virus that unspooled the economy and their personal finances.

We applaud FHFA's focus on housing affordability. NMHC and NAA remain committed to not only working to stabilize the current pandemic related disruption, but also to addressing housing equity, affordability, and access going forward. Before COVID-19, the country was facing a nationwide housing affordability challenge and a historic demand

¹ NMHC Quick Facts

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for new rental housing. Beginning in the mid -2000s, the nation experienced the greatest renter wave in its history, as the number of households who rent rose by more than 7 million.²

Fueled by this extraordinary demand for apartment homes, recent NMHC and NAA research finds that we need to build an average of 328,000 apartments every year.³ Yet our industry faced significant challenges to new apartment construction, development, and renovation before the crisis, and we have only hit that mark four times since 1989.⁴

Many factors influence the apartment industry's health and ability to meet the nation's growing demand for rental housing, but the availability of consistently reliable and competitively priced capital is the most essential. In fact, it is the single most important factor to ensuring that the apartment industry can meet the growing rental housing demand and the nation's housing affordability needs.

To address the affordability crisis, we need capital to support development and renovation at all price points and in all markets, including urban, rural, smaller secondary and tertiary markets that may not meet the credit or return standards required by many private capital debt providers.

NMHC and NAA support a robust, rational, and transparent capital framework that will allow the Enterprises to serve their housing mission but protect taxpayers from future bailouts. With that in mind, we have continued to engage as FHFA has sought to define the Enterprise regulatory capital framework (ERCF) for the agencies. First, by submitting comments on the original capital framework rule on [November 16, 2018](#), (First Comment Letter) and again submitting comments on [August 31, 2020](#), (Second Comment Letter) on the re-proposal of the original framework.

NMHC and NAA raised a number of concerns that were not addressed in the final ERCF rule published on December 17, 2020. We, therefore, appreciate having the opportunity to again comment on a number of issues important to the multifamily industry. FHFA's stated purpose of this newly Proposed Rule is to seek comments on a proposal to amend the Enterprise Regulatory Capital Framework (ERCF) by refining the prescribed leverage buffer amount (PLBA), modifying the approach for determining the prudential floor for retained credit risk transfer (CRT) and removal of the overall effectiveness adjustment for retained CRT exposures.

² U.S. Census Bureau, Various Surveys

³ Hoyt Advisory Services; NMHC and NAA, "U.S. Apartment Demand – A Forward Look", May 2017.

⁴ U.S. Census Bureau, New Residential Construction, updated 4/2021.

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We commend FHFA for taking this important first step in addressing structural weaknesses in the current ERCF. This was one of the very issues that NMHC and NAA identified in our Second Comment Letter, responding to FHFA's *NPR for Enterprise Capital Requirements* (NPR). Our comments today will focus on the following:

- 1. Important Multifamily Changes Reflected in FHFA's October 10, 2021, Proposed Rule.**
- 2. Additional Recommendations Important to Ensure Continued Orderly Flow of Capital for the Multifamily Industry.**

Important Multifamily Industry Changes Reflected in October 10, 2021, Proposed Rule

The Proposed Rule recommends changes to the calculation of the PLBA to address the potential that the existing PLBA could frequently be the binding constraint when determining the Enterprises risk-based capital. We are in agreement with FHFA in recognizing that the PLBA has become a binding constraint over the prior 18 months and could create unintended outcomes and be a hinderance going forward.

..a leverage ratio that exceeds risk-based capital requirements throughout the economic cycle could lead to undesirable outcomes at the Enterprises, including promoting risk-taking and creating disincentives for CRT and other forms of risk transfer.⁵

Consequently, we are in agreement with the proposed change to the calculation of the PLBA and believe it will serve as a credible backstop to the risk-based capital requirements of the Enterprises.

The Proposed Rule also addresses another NMHC and NAA concern. We believe that the existing ERCF rules diminish the value of capital relief provided by CRT. The existing 10 percent prudential floor for capital for retained risk after CRT was identified as being arbitrary and too high. As pointed out in our Second Comment Letter, the minimum 10 percent floor ignored the long-standing performance of the multifamily CRT utilized by the Enterprises and would potentially lead to more risk taking by the Enterprises. We applaud FHFA for recognizing that CRT is an important tool for the Enterprises to manage risk. Lowering the prudential floor is a step in the right direction.

However, we believe that additional analysis is necessary, and we encourage FHFA to evaluate the type of CRT being used, how effective that type is in transferring risk, and how the CRT performs over time in order to calibrate the proper level appropriately and

⁵ Federal Register 12 CFR Part 1240 RIN 2590-AB17 p 11

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continually for the prudential floor. 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 from the Enterprises.⁶ 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.

The prudential floor could affect the multifamily housing market. Even at a 5 percent CRT floor for multifamily mortgage exposures it still 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.

Additional Recommendations Important to Ensure Continued Orderly Flow of Capital for the Multifamily Industry

While FHFA's Proposed Rule recommends changes to the ERCF on several of the critical issues raised in our Second Comment Letter, there are a number of other issues that we believe must be addressed:

- **Pro-cyclicality of the capital framework:** The pro-cyclicality of the capital framework for the multifamily housing businesses of the Enterprises is not adequately reflected in the ERCF. FHFA noted that it has sought suggestions in two prior notices and has received numerous suggestions on implementing a countercyclical capital approach, but the recommendations relied on proprietary data or indices. Seeking comments for a third time without providing any context regarding the data or indices availability, cost or applicability leaves the industry without sufficient information to adequately respond to this question.

⁶ 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).

Our Second Comment Letter provided the following suggestion to address the procyclicality of the capital framework.

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 cyclical by using loan-to-value ratios at origination, not a market-to-market metric, or a collar on mark-to-market values.

However, we can give no other suggestions without further information and transparency from FHFA on their prior decisions. FHFA should specifically address the procyclicality issue by providing a detailed analysis of the various proposals with sufficient detail for the industry to respond.

- **The ERCF provides insufficient information regarding the derivation of the lookup grids and risk multipliers applicable to multifamily mortgage exposures and could undermine the affordable and workforce housing markets and the Enterprises' related initiatives:** Both our First and Second Comment Letters raised concerns about the insufficient information regarding the derivation of the lookup grids and risk multipliers applicable to multifamily mortgage exposure. It is important to understand the data set FHFA used in determining the amount of capital to be held because the amount of capital required to be held will have a direct impact on the availability of multifamily capital.

The Proposed Rule does not address the concerns about the determination methodology for multifamily capital raised in our First Comment Letter on the ERCF. As stated in that letter, “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.”

- **Incongruent Treatment of Multifamily and single-family housing:** FHFA should take care to ensure that the ERCF reflects the unique risk management characteristics and demonstrated credit performances of the multifamily business as compared to the single-family business. FHFA must

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provide greater transparency regarding the data underlying the Proposed Rule, and in particular, FHFA should provide the analytical approach 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 that position.

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 that the Proposed Rule is an important first step in addressing the structural flaws in the existing ERCF, but that more work needs to be done to address other flaws hampering the approach to the multifamily capital determination.

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,



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