



February 11, 2020

The Honorable Mark Warner
United States Senate
Washington, DC 20510

Dear Senator Warner:

We write in response to your December 17, 2019 letter inquiring about the Administration's plans to reform our nation's housing finance system. We appreciate the opportunity to further engage with you on this issue and look forward to continuing to work with Congress to enact reform.

The Treasury Department and the Federal Housing Finance Agency (FHFA) share your belief that it is critical to maintain robust and liquid residential finance lending markets, protect access to mortgage credit in all market conditions, and promote sustainable homeownership and affordable rental opportunities for working families. To do so, we must build a resilient housing finance system that protects taxpayers, defines a limited role for the federal government, and promotes private-sector competition.

On September 5, 2019, Treasury released its Housing Reform Plan (Plan) pursuant to the Presidential Memorandum issued on March 27, 2019. The principles Treasury laid out are simple and clear: protect taxpayers, promote private-sector competition, preserve and improve support for affordable housing, and do so without increasing borrowing costs or jeopardizing access to the 30-year fixed-rate mortgage. Additionally, Treasury made legislative and administrative recommendations, including identifying preconditions for the termination of the government-sponsored enterprises' (GSE) conservatorships. In making these recommendations, Treasury was not prescriptive as to a specific path or the timeline to be followed, as those items warrant a more fulsome and iterative review as the reform initiatives evolve.

Treasury's recommendations for administrative action are well aligned with, but do not supersede, FHFA's statutory duties as the independent regulator and conservator of Fannie Mae and Freddie Mac (the GSEs or the Enterprises). The Housing and Economic Recovery Act of 2008 (HERA) established FHFA as "an independent agency of the Federal Government" with the authority and responsibility to ensure the Enterprises operate "in a safe and sound manner, including maintenance of adequate capital and internal controls."

Treasury and FHFA believe comprehensive housing finance reform legislation could best achieve lasting structural reform that tailors explicit government support of the secondary market, repeals the GSEs' congressional charters and other statutory privileges that give them a competitive advantage over private-sector competition, and grants FHFA the authority to charter competitors to the re-chartered GSEs. Notwithstanding our shared preference for legislation,

Treasury will continue to support FHFA's administrative actions to enhance the regulation of the GSEs, promote private-sector competition, and satisfy the preconditions set forth in its plan for ending the GSEs' conservatorships.

We appreciated the opportunity to testify before the Senate Banking Committee on September 10, 2019 on these issues and have since submitted responses to the Questions for the Record that many members of the Committee provided thereafter. Enclosed are our responses to the questions set forth in your December 17, 2019 letter. Where appropriate, these responses reflect the distinct authorities and responsibilities of Treasury (as a part of the Administration) and FHFA (as an independent regulator). For questions more appropriately answered by one or the other of our agencies, we have noted that in our response.

Treasury and FHFA look forward to working with Congress on a bipartisan basis to develop legislation for comprehensive housing finance reform that establishes a stronger and more resilient housing finance system.

If you have any further questions, please direct your staff to contact Treasury's and FHFA's legislative affairs offices.

Sincerely,



Steven T. Mnuchin
Secretary
U.S. Department of the Treasury



Mark A. Calabria
Director
Federal Housing Finance Agency

Enclosure

cc: The Honorable Sherrod Brown
The Honorable Catherine Cortez Masto
The Honorable Doug Jones
The Honorable Robert Menendez
The Honorable Jack Reed
The Honorable Brian Schatz
The Honorable Kyrsten Sinema
The Honorable Tina Smith
The Honorable Jon Tester
The Honorable Chris Van Hollen
The Honorable Elizabeth Warren

Attachment: Responses to Questions Posed in 12/17/19 Letter

1. Please explain, in detail, the timeline, or benchmarks, by which the Administration intends to adopt reforms and release the GSEs from conservatorship. If multiple timelines are being considered, please provide all potential scenarios.
 - **Treasury:** Our preference is to work with Congress to enact comprehensive housing finance reform legislation. The Treasury Plan recommends that, pending legislation, FHFA should exercise its authority as conservator to begin the process to end each GSE's conservatorship. In its Plan, Treasury makes recommendations and lists preconditions for the termination of the GSEs' conservatorships, including, among other things, amendments to the Senior Preferred Stock Purchase Agreements (PSPAs) and FHFA's determination that each GSE can operate safely and soundly and without posing an undue systemic risk or disrupting mortgage markets. The Treasury Plan was not prescriptive with respect to a specific path or the timeline, as those items warrant a more fulsome and iterative review. The process of developing a roadmap for each Enterprise's exit from conservatorship is still ongoing.
 - **FHFA:** From FHFA's perspective, its assessment of the timeline for an Enterprise's exit from conservatorship will be driven by the Enterprise's ability to meet financial, risk-management, and operational benchmarks appropriate for financial institutions of their risk, size, and systemic importance. FHFA's Strategic Plan for the Conservatorships, released by FHFA in October 2019, instructs the Enterprises to support FHFA in the development and implementation of responsible, milestone-based plans to transition out of conservatorship, including capital restoration strategies and roadmaps.
2. Please explain, in detail, any and all administrative reforms that you believe are necessary at the GSEs prior to their release from conservatorship, and how those reforms fulfill the GSEs' charter obligations.
 - **Treasury:** The Treasury Plan recommends that, pending legislation, FHFA should exercise its authority as conservator to begin the process to end each GSE's conservatorship. In its Plan, Treasury makes recommendations and lists preconditions for the termination of the GSEs' conservatorships, including, among other things, amendments to the PSPAs and FHFA's determination that each GSE can operate safely and soundly and without posing an undue systemic risk or disrupting mortgage markets.
 - **FHFA:** To exit conservatorship, each Enterprise must maintain the risk management practices, corporate governance standards, capital, and other loss-absorbing capacity necessary to operate in a safe and sound manner and in accordance with the statutory purposes stated in their charters. To achieve these objectives, FHFA will consider the following administrative reforms: (i) prescribing regulatory capital requirements for both Enterprises; (ii) approving a capital restoration plan developed by each Enterprise; and (iii) strengthening FHFA's supervisory and oversight procedures and systems to ensure that examination of the Enterprises is consistently rigorous, timely, and effective, and that additional resources are efficiently allocated to meet the needs of critical areas such as risk modeling and information technology.

3. Would you consider releasing the GSEs prior to full implementation of the enumerated reforms? If so, please provide your reasoning and under what circumstances you would considering doing so.
 - **Treasury and FHFA:** Treasury's Plan recommends that, pending legislation, FHFA should exercise its authority as conservator to begin the process to end each GSE's conservatorship. In its Plan, Treasury makes recommendations and lists preconditions for the termination of the GSEs' conservatorships, including, among other things, amendments to the PSPAs and FHFA's determination that each GSE can operate safely and soundly, and without posing an undue systemic risk or disrupting mortgage markets.
4. Please explain, in detail, what reforms or policy changes may be adopted as part of an amendment to the Preferred Stock Purchase Agreement (PSPA). What, if anything, prevents future modifications to these changes?
 - **Treasury and FHFA:** On September 30, 2019, consistent with the Treasury Plan, Treasury and FHFA announced that they had agreed to permit the GSEs to retain additional capital—up to \$25 billion for Fannie Mae and \$20 billion for Freddie Mac. In these letter agreements, Treasury and FHFA committed to pursue additional changes to the PSPAs that would implement administrative reforms detailed in the Plan. Treasury and FHFA are considering what additional amendments to the PSPAs are appropriate, and therefore it is not possible to say at this time what policy changes will be adopted as part of any future PSPA amendments.
5. Do you intend to maintain a line of credit with the Treasury outside of conservatorship through the PSPAs? Would you maintain the current dollar amount of the line of credit or adjust to some other amount? What, if anything, prevents removing that line of credit in the future?
 - **Treasury:** To preserve stability in the housing finance system pending comprehensive housing finance reform legislation, Treasury expects that it will be necessary to maintain limited and tailored government support for the GSEs by leaving the PSPA commitment in place after the conservatorships have ended.
 - **FHFA:** Treasury and FHFA are considering what additional amendments to the PSPAs are appropriate. Any future amendments to the PSPAs require the agreement of both FHFA and Treasury.
6. Please explain, in detail, the legal basis for using a consent agreement to accelerate the release of the GSEs from conservatorship. Under what conditions does the Administration plan to use the consent agreement to further the release of the GSEs from conservatorship, and what reforms or restrictions would be considered under this agreement?
 - **FHFA:** As an independent regulator, a consent order may or may not be part of the path to an Enterprise's exit from conservatorship. A consent order does not necessarily accelerate the end of a conservatorship. By setting requirements to which the Enterprises would be expected to adhere after exiting conservatorship, a consent order may provide a

bridge between conservatorship and a return to the Enterprise operating its business in the ordinary course. This is a well-established regulatory method to resolve issues that warrant enforcement actions without expending the time and resources necessary to present specific charges and conduct public hearings. A consent order is entered into voluntarily between a regulated entity and its regulator and can be enforced by the regulator through common enforcement actions, similar to the way a court maintains jurisdiction during the settlement of a court action in order to ensure compliance. For instance, under a consent order, FHFA would have the authority to permit an Enterprise that has reached a certain capital level below the required minimum to operate outside of conservatorship subject to a capital restoration plan (see 12 U.S.C. §§ 4615, 4616, 4617, 4622). Under such a scenario, if the Enterprise were to fail to comply with the consent order and the capital restoration plan, FHFA would have immediate grounds to proceed to enforcement in any manner it considers appropriate, including considering whether grounds exist for appointing a conservator or receiver under 12 U.S.C. § 4617(a)(3), or further enforcement under 12 U.S.C. § 4631 through 4636a.

7. What, if anything, prevents a future modification to the consent agreement?
 - **FHFA:** A consent order is an agreement. Methods of modifying a consent order are either provided for in the consent order itself or agreed to by both parties. In the event an Enterprise were to fail to comply with the terms of a consent order and the two parties could not agree on a resolution through modification, FHFA would have the authority to employ any of the enforcement methods described above.
8. What capital levels do you believe would be necessary for purposes of releasing the GSEs from conservatorship?
 - **Treasury and FHFA:** FHFA is in the process of re-proposing its capital rule for the Enterprises. Therefore, it is premature to comment on specific capital levels beyond reiterating that ultimately the Enterprises should maintain capital appropriate for financial institutions of their risk, size, and systemic importance.
9. Would you consider releasing the GSEs from conservatorship before they have built the level of capital you require of them as their regulator? If so, please explain why you would release them prior to having met their regulatory capital requirements?
 - **Treasury and FHFA:** FHFA is in the process of re-proposing its regulatory capital rule for the Enterprises. Treasury's Plan recommends that, pending legislation, FHFA should exercise its authority as conservator to begin the process to end each GSE's conservatorship. In its Plan, Treasury makes recommendations and lists preconditions for the termination of the GSEs' conservatorships, including, among other things, amendments to the PSPAs and FHFA's determination that each GSE can operate safely and soundly and without posing an undue systemic risk or disrupting mortgage markets.
10. How does the Administration plan to raise the level of capital that FHFA deems necessary and on what timeline? Would the Administration consider releasing the GSEs from

conservatorship prior to achieving a threshold capital level, and if so, what level would that be?

- **Treasury and FHFA:** At the appropriate time, the Enterprises will likely need to raise third-party capital. However, Treasury and FHFA have not made recommendations or decisions as to how or when such a capital raise should occur. The options pose complex financial and legal considerations that will merit careful consideration, which Treasury and FHFA will be exploring. Since Treasury and FHFA signed the letter agreements modifying the PSPAs on September 27, 2019, the Enterprises have approximately tripled their combined capital through retained earnings, which is one important avenue for building a level of capital commensurate with operating in a safe and sound manner.
11. Fannie Mae and Freddie Mac make valuable contributions to the housing market, in part due to investments made over the past decade. Would the Administration consider reducing the value that the GSEs provide to American taxpayers in order to expedite the release of the GSEs from conservatorship?
- **Treasury:** Pending legislation, Treasury and FHFA will review a range of options consistent with the objectives and recommendations in the Plan as we consider changes to the PSPAs in the months ahead.
12. Would the Administration consider changing the repayment requirements of the existing PSPA? If so, how?
- **Treasury and FHFA:** FHFA and the Administration's preference is to work with Congress to enact comprehensive housing finance reform legislation. Pending legislation, Treasury and FHFA will review a range of options consistent with the objectives and recommendations in the Plan as we consider changes to the PSPAs in the months ahead. As contracts between FHFA (as conservator of the Enterprises) and Treasury, the PSPAs are subject to future amendments upon agreement by both parties. No decision related to Treasury's repayment requirements has been made at this time.
13. Does the Administration plan to reduce the GSEs' footprint? If so, what specific product lines and services would see an increase in price or be curtailed or eliminated at the GSEs? What is the statutory authority for such a plan? Please provide any models or assessment that FHFA has conducted to analyze the impact of these changes on prospective homeowners, existing homeowners, renters, and the cost and availability of credit across mortgage products.
- **Treasury:** Treasury recommends that activities that benefit from government support should be assessed to ensure they align with a clear rationale warranting such support. Treasury took great care to formulate its recommendations in the Plan to mitigate the risk of market disruption or an increase in borrowing costs. Absent legislation, FHFA, as an independent agency, will determine whether to pursue recommendations in the Plan.
 - **FHFA:** As Congress debates housing finance reform legislation, it will be critically important to define the role of the Enterprises, including permissible activities. Pending

legislation, FHFA will remain focused on fulfilling its statutory responsibilities to ensure that the Enterprises serve as a reliable source of liquidity for our nation's housing finance markets and for community investment. To date, FHFA has not formally constructed any models or assessments related to potential changes to the Enterprises' products or services. Any such changes must be consistent with the FHFA Director's statutory duties, which include ensuring that "each regulated entity operates in a safe and sound manner, including maintenance of adequate capital and internal controls."¹

14. Do you believe that the GSEs will provide a smaller cross-subsidy in the mortgage market if their role is reduced, as you propose? If not, how would they be able to provide the same level of cross-subsidy and nationwide access in both the single-family and multifamily markets in a reduced role? If so, what do you propose to do administratively to ensure that they are still able to provide as much support for low- and moderate-income lending and access to credit among underserved communities?

- **FHFA:** Treasury and FHFA share the goals of protecting taxpayers and defining the role of the federal government in the housing finance system, while also promoting private-sector competition. Pending legislation, FHFA will continue to ensure that the Enterprises fulfill their statutory obligations. For instance, one of the three core objectives of the new Strategic Plan for the Conservatorships that FHFA released in October 2019 is to ensure that the Enterprises focus on their core mission responsibilities to foster competitive, liquid, efficient, and resilient national housing finance markets that support sustainable homeownership and affordable rental housing.

15. Will the GSEs continue to contribute annually to the Housing Trust Fund and Capital Magnet Fund throughout any transition to your desired end state? Under what circumstances would you potentially consider allocations to these trust funds as preventing the GSEs from completing a capital restoration plan? Do you expect to deem either GSE as "undercapitalized"?

- **FHFA:** Decisions regarding contributions to the Housing Trust Fund and Capital Magnet fund are determined by a process established in HERA. By statute, the FHFA Director must temporarily suspend Enterprise allocations to the Housing Trust Fund and the Capital Magnet Fund upon a finding that the allocations (1) are contributing or would contribute to the financial instability of the Enterprise, (2) are causing or would cause the Enterprise to be classified as undercapitalized, or (3) are preventing or would prevent the Enterprise from successfully completing a capital restoration plan. Because FHFA suspended Enterprise capital requirements when the Enterprises were placed in conservatorships, the latter two conditions have not been applicable. To assess the financial stability of the Enterprise, FHFA considers Enterprise earnings and income, among other performance measures. Post-conservatorship, FHFA will assess the capital levels of the Enterprises as required by statute in 12 U.S.C. § 4567(b).

16. Does the Administration intend to undertake a new rulemaking for the Enterprise Housing Goals for mortgages purchased by the GSEs? Will the scope of that rulemaking exceed the

¹ 12 U.S.C. § 4513(a)(1).

scope of the previous rulemaking, which recalibrated numerical purchase goals but did not alter the fundamental structure of the goals?

- **FHFA:** As an independent regulator, FHFA has rulemaking authority and jurisdiction over the Enterprises' housing goals. The most recent rulemaking was made effective March 14, 2018, and covers the Enterprise housing goals through 2020. FHFA intends to conduct a rulemaking regarding the housing goals later this year.

17. Will the Administration seek to amend the Duty to Serve rule, or otherwise amend the types of products and services the Enterprises may offer to meet their Duty to Serve requirements?

- **FHFA:** As an independent regulator, FHFA has jurisdiction over the Duty to Serve rule and the types of products and services the Enterprises may offer. Also, FHFA has the statutory responsibility to implement the Duty to Serve requirements established in HERA. Accordingly, the Enterprises are responsible for serving rural, manufactured housing, and affordable housing preservation markets. The Duty to Serve requirements will be a consideration in the process of developing and implementing a responsible plan to transition out of conservatorship. The Enterprises' current three-year Underserved Markets Plans went into effect on January 1, 2018 and cover the Enterprises' objectives and activities under the Duty to Serve program through 2020. FHFA expects the Enterprises to develop new Duty to Serve plans later this year.

18. What analysis has the Administration undertaken to understand the impact of any reforms or changes in product offerings or pricing to the profitability of the GSEs? What analysis has it performed to understand the impact of such changes on housing affordability, g-fees, or potential market disruptions across all segments of borrowers?

- **Treasury:** The Plan provides a framework for reform. It would be premature to draw conclusions about the impact of reforms pending any decisions regarding how to implement Treasury's recommendations. Absent legislation, FHFA, as an independent agency, will determine whether to pursue recommendations in Treasury's Plan. Treasury took great care in formulating its recommendations in ways that would not disrupt the market, raise borrowing costs, or limit access to credit for creditworthy borrowers to achieve sustainable homeownership.

19. What analysis has the Administration performed to model specific effects of any reforms or changes in product offerings or pricing on access to mortgage credit for low- and moderate-income homebuyers and renters; first time homebuyers; or borrowers of color? Please explain in detail any assumptions underlying your analysis. If you have not conducted such an analysis, please explain how you could move forward on any of the proposed provisions without such calculation while also fulfilling the GSEs' statutory mandates to "provide ongoing assistance to the secondary market for residential mortgages (including activities related 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 "promote access to

mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas).”

- **Treasury:** Treasury recommends that activities that benefit from government support should be assessed to ensure they align with a clear rationale warranting such support. The Plan provides a framework for reform. It would be premature to draw conclusions on the impact of reforms pending any decisions regarding how to implement Treasury’s recommendations. Treasury took great care to formulate its recommendations to mitigate the risk of market disruption or an increase in borrowing costs. Absent legislation, FHFA, as an independent agency, will determine whether to pursue recommendations in Treasury’s Plan. Treasury supports the GSEs’ longstanding role in promoting access to affordable mortgage credit, including access by low- and moderate-income, rural, and other historically underserved borrowers.

20. Please describe any concerns raised by investors with releasing the GSEs from conservatorship without an indefinite government backstop and any response you might have to those concerns.

- **Treasury:** In the absence of Congressional action to establish an explicit, paid-for guarantee backed by the full faith and credit of the federal government limited to the timely payment of principal and interest on qualifying MBS, Treasury expects that it will be necessary to maintain limited and tailored government support for the GSEs by leaving the PSPA commitment in place after the conservatorships have ended. Treasury’s support through the PSPA commitment continues to provide confidence to investors that the GSEs will meet their financial obligations. Stability in the housing finance system is crucial, and there should be no disruption to the market as a result of Treasury’s recommended administrative reforms. Only Congress has the authority to create an explicit government guarantee. We look forward to working with Congress on a path forward.
- **FHFA:** In considering and overseeing each Enterprise’s implementation of its eventual roadmap to exit conservatorship, FHFA will use its available supervisory, regulatory, and other authorities to oversee the Enterprise’s fulfillment of its statutory mandates, including to continue supporting a competitive, efficient, and liquid housing finance system.

21. Please provide FHFA’s analysis of impacts on mortgage costs and the To-Be-Announced market from releasing the GSEs from conservatorship or any other changes to the GSEs’ current status without a line of credit or other catastrophic backstop.

- **FHFA:** FHFA intends to follow and comply with the requirements and duties set forth in statute, including Section 1367 of HERA, regarding the grounds for determining the status of its regulated entities. Treasury and FHFA will proceed expeditiously but prudently to protect American taxpayers while promoting the integrity of residential lending markets.

22. Will the Administration conduct a fair housing analysis of all proposed policy changes? If not, why not? Has the Administration already conducted such an analysis of its proposed policy changes?

- **Treasury:** The Plan provides a framework for reform. It would be premature to conduct detailed analysis pending any decisions regarding how to implement Treasury's recommendations. Treasury took great care to formulate recommendations in its Plan in ways that would not disrupt the market or limit access to sustainable homeownership.
- **FHFA:** As an independent regulator, FHFA has not conducted any analyses related to the Administration's plan. FHFA's Office of Fair Lending Oversight oversees and meets regularly with the Enterprises to assess policy and program changes and will continue to do so.