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February 17, 2022

The Honorable Sandra Thompson
Acting Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, D.C. 20024

RE: Fannie Mae & Freddie Mac Temporary Requirements for Condominium and Cooperative Projects

Dear Director Thompson:

We are writing to you on behalf of the Community Associations Institute's (CAI) 43,000 members concerning the safety and marketability of the national condominium and cooperative housing stock. CAI members include homeowners in planned communities, condominiums, and housing cooperatives; volunteer leaders serving on their community association or corporation board; and the professionals who work with and support these leaders in managing and maintaining their communities. We are the only national membership organization dedicated to supporting the community association housing model, which accounts for 25% of the national housing stock.¹

Request for Delay of Enterprise

Temporary Condominium & Cooperative Requirements

CAI members expressed significant uncertainty and concern over condominium and cooperative project eligibility requirements recently announced by Fannie Mae and Freddie Mac.² CAI requests FHFA suspend and delay implementation of the temporary guidelines by at least one year.

¹ Foundation for Community Association Research. *2020-2021 U.S. National and State Statistical Review*. July 2021. Available at https://foundation.caionline.org/wp-content/uploads/2021/07/2021StatsReview_Web.pdf.

² Fannie Mae Lender Letter 2021-14; Freddie Mac Bulletin 2021-38.

CAI is the only national organization dedicated to fostering competent, well-governed community associations (condominiums, cooperatives, and planned communities) that are home to approximately one in every five American households. For more than 40 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. CAI's 36,000 members include community association volunteer leaders, community managers, community management firms, and other professionals and companies that provide products and services to community associations.

Our members report creditworthy borrowers have been denied credit to purchase homes and refinance mortgages in condominium and cooperative projects with no safety, soundness, structural integrity, or habitability concerns because of the temporary guidelines. CAI remains confident this is not the intended outcome of the enterprises' temporary guidelines but are spillover effects that can and must be remedied.

CAI supports the intent of the new requirements and understands the need for the enterprises to assess and mitigate risks associated with their respective condominium unit and cooperative share mortgage portfolios. In this spirit, CAI respectfully submits the recommended delay supports this outcome by (1) reducing uncertainty; (2) allowing condominium associations, housing corporations, their managing agents, and service providers to produce documentation materials more efficiently; and (3) accounting for local and state government enactment of appropriate condominium and cooperative project safety and financial solvency standards.

Reducing Uncertainty Will Improve Implementation

Condominium and cooperative boards as well as their managing agents and advisors report two significant sources of uncertainty resulting from the temporary guidelines. They express concern over the nature of information sought in revised forms and limitations on the sources of such information. Boards and their managing agents additionally report the compressed implementation schedule did not anticipate governance requirements that constrain certain board actions required by the temporary guidance from Fannie Mae and Freddie Mac.

Boards and Managing Agents Named Sole Source of Vague and Subjective Information

Fannie Mae and Freddie Mac condominium and cooperative guidelines previously have sought objective information to validate project eligibility and loan level compliance with the enterprises' loan delivery standards (e.g., association budget, insurance coverage, active litigation, etc.). The enterprises allowed originators to rely on association and corporation boards, a community's managing agent, project information vendors, and other parties, including condominium and cooperative unit owners, as acceptable sources of required information. The temporary guidelines and addendum to Fannie Mae Form 1076 and Freddie Mac Form 476a veer sharply from these established practices.

The December 2021 addendum to Fannie Mae Form 1076 and Freddie Mac Form 476a direct originators to seek vague and subjective information concerning condominium and cooperative projects. The sole acceptable sources of the newly required vague and subjective information are condominium and cooperative boards and their managing agents.³ The failure of a board or its

³ Fannie Mae Form 1076 (Addendum Added December 2021), p. 7, available at <https://singlefamily.fanniemae.com/media/document/pdf/form-1076>, and Freddie Mac Form 476a, p. 1, available at <https://sf.freddiemac.com/content/assets/resources/pdf/forms/form-476a.pdf>. These forms, in pertinent part,

managing agent to provide this information renders a mortgage ineligible for delivery to the enterprises.⁴

For example, if a condominium unit or corporation share mortgage is to successfully close and be eligible for delivery to the enterprises, condominium and cooperative boards or their managing agents must attest to the absence of “any outstanding violations of jurisdictional requirements (zoning ordinances, codes, etc.) related to the safety, soundness, structural integrity, or habitability of the project’s buildings.”⁵ These parties are further required to forecast if “*it is anticipated that the project will, in the future, have such violation(s)*” and attest to this forward-looking statement.⁶

There is no rational, objective basis upon which a condominium or cooperative board may guarantee future building conditions and the legal conduct of future boards. Likewise, a community manager has no rational, objective basis or authority under law to render a legal opinion on a project’s compliance with local, state, and national law. Newly elected boards and managers likely do not have a rational, objective basis to attest, without limitation, to information being sought by the enterprises.

The uncertainty derived from mandatory attestations to forward-looking statements will impact the enterprises’ ability to be a source of liquidity for the community association housing model. A delay will allow FHFA, the enterprises, and stakeholders to clarify information sought, acceptable sources of information, and the standards of attestation of parties providing information.

Governance Constraints as a Source of Uncertainty

Other sources of uncertainty emerge from the inability of condominium and cooperative boards to immediately comply with the temporary guidelines due to governance constraints. For example, association and cooperative boards may not unilaterally amend budget documents during the budget year to comply with temporary Fannie Mae reserve requirements. A delay will allow the enterprises to receive practical process feedback from stakeholders and resolve this and similar conflicts and uncertainties without disrupting condominium and cooperative home sales.

Document Production

Many condominium and cooperative boards use service providers to improve the efficiency of document production for mortgage underwriters. These service providers report additional time is necessary to incorporate newly required documentation in current systems to ensure the efficiency of mortgage originations in condominium and cooperative projects.

instruct “This Addendum is applicable to both condominium and cooperative projects. *It must be completed by an authorized representative of the Homeowners’ Association (HOA)/Cooperative Corporation.*” (*Emphasis added*).

⁴ Fannie Mae. *Appraiser and Lender Responsibilities: Appraising and underwriting condo and co-op projects*. December 2021, p. 3. Available at <https://singlefamily.fanniemae.com/media/document/pdf/appraising-and-underwriting-condo-and-co-op-projects>.

⁵ Fannie Mae Form 1076 (Addendum Added December 2021), p. 7; Freddie Mac Form 476a, p. 1.

⁶ *Ibid.* (*Emphasis added*).

Based on CAI member feedback, the scope and nature of new document production requirements are proving untenable for condominium associations and cooperative corporations and their managing agents that use manual document production processes. Condominium associations and housing cooperatives have long provided data and information to mortgage originators to validate project eligibility and loan level compliance with enterprise loan delivery standards. Opportunity for additional education and clarification on required documents for originators and association and cooperative boards will assist FHFA and the enterprises in achieving desired risk management outcomes.

Local and State Governments Acting to Protect Condominium and Cooperative Housing

The collapse of Champlain Towers South in Surfside, Fla., on June 24, 2021, and the deaths of 98 residents and guests reverberated through condominiums and cooperatives around the nation. Mayors and other local government officials acted with urgency to verify the safety status of condominium and cooperative projects in their communities.⁷

State legislators have introduced and are passing legislation to strengthen condominium and cooperative reserve funding and building inspection requirements.⁸ Because government resources are finite (i.e., there are a limited number of building inspectors qualified to inspect the thousands of condominium projects in Florida), state and local policymakers are assessing risks to target resources efficiently and effectively.

For example, state legislators are considering multiple options to ensure resources are targeted to buildings that will receive the greatest benefit from risk assessments and are identifying and categorizing buildings by geographic location, age, and type of structure. Florida legislators are targeting resources to condominium projects located in a coastal region or flood plain or that are older than 30 or 40 years with the understanding these projects will benefit from additional scrutiny.

⁷ See, for example, Cullum, James. *ALX Now*. “[Alexandria looks closer at Virginia building safety regulations after Florida condo collapse](#)” July 6, 2021.

See also, Suarez, Chris. *Richmond Times-Dispatch*. “[Richmond mayor and other Virginia officials considering examination of local building safety regulations after Miami condo collapse](#)” July 9, 2021.

See also, Dinkova, Lidia and Katherine Kallergis. *The REAL Deal*. “[County, cities rush to inspect older buildings in wake of Surfside collapse](#)” June 28, 2021.

See also, Smith, Mitch. *The New York Times*. “[Far From Florida, Mayors Fear Prospect of a Collapse in Their Own Cities](#)” July 20, 2021;

See also, The City of Jersey City. “[Mayor Fulop Strengthens Safety Mandates, Introducing New Legislation Following Devastating Miami Building Collapse](#)” July 7, 2021.

See also, Lai, Stephanie. *The Washington Post*. “[Following building collapse, D.C. enhances its safety review process](#)” July 10, 2021.

⁸ As of February 7, 2022, CAI has identified 48 bills introduced in state legislatures amending state condominium and cooperative building inspection requirements. Eight state legislatures are considering legislation to reform reserve funding requirements. See <https://www.caionline.org/Advocacy/Resources/Pages/Legislative-Tracking.aspx>.

The enterprises developed and implemented the temporary guidance without allowing local and state governments the opportunity to enact legislation and fund programs to verify and ensure the structural integrity of condominium and cooperative projects. A delay will allow the enterprises to examine these actions and evaluate their respective guidelines based on local and state government policy actions, including actions that target local and state resources to projects at greatest risk.

CAI shares the enterprises' underlying goals of ensuring that mortgage backed securities are supported by investment grade collateral and enhancing the safety of condominium and cooperative homeowners and residents. CAI has continually educated associations on the need to examine and address aging infrastructure in the community association housing model, and this process involves myriad partners and stakeholders.⁹ CAI respectfully proposes that engaging community association stakeholders as partners through a delay in guidance implementation will result in greater gains on shared goals by reducing uncertainty, permitting new documentation systems to be designed, and accounting for local and state government actions.

CAI believes local and state governments are foundational in protecting the financial stability and safety of condominium and cooperative projects. Working with the units of government closest to condominium and cooperative homeowners to enact meaningful and lasting reform is among CAI's highest priorities. This strategy of local and state engagement is leading to enactment of achievable and transformative reforms that are sustainable.

CAI Condominium Safety Public Policy Report & Policy Recommendations

Immediately following the Champlain Towers South tragedy last June, CAI convened a multidisciplinary collaboration of industry experts to review state statutes, national and international best practices, and common challenges affecting the safety and soundness of condominium and

⁹ See March, Nico F. *Common Ground*, "Below the Surface: Long-term infrastructure repairs aren't included in many associations reserve plans. But ignoring them could endanger your community's financial health" (January/February 2009), available at <https://www.caionline.org/CommonGround/Pages/Free%20articles/Below-the-Surface.aspx>. See also, Molnar, Michele. *Common Ground*, "Crumbling Tumbling" What goes up must come down (and be repaired or replaced). Prepare now for your community's infrastructure" (March/April 2013): available at <https://www.caionline.org/CommonGround/Pages/Free%20articles/Crumbling-Tumbling.aspx>. See also, Babcock, Pamela. *Common Ground*, "Sea Change: A Jacksonville Beach condominium reverses 40 years of salt water and sea air damage" (November/December, 2014): available at <https://www.caionline.org/CommonGround/Pages/Free%20articles/Sea-Change.aspx>. See also, Brooks, Tom. *Common Ground*, "Nuts and Bolts: High-Rise Risks" (March/April 2020), available at <https://www.caionline.org/CommonGround/Pages/Free%20articles/Nuts-and-Bolts-CG-March-April-2020.aspx>. See also, Berding, Tyler P. *Common Ground*, "System Failure: Regular reserve studies and funding aren't enough to cover the increasingly common threat of infrastructure failure. How do we fix the system before more tragedies strike?" (May/June 2020), available at <https://www.caionline.org/CommonGround/Pages/Free%20articles/System-Failure.aspx>. See also, McBurney, Margaret. *Common Ground*, "Danger Ahead: Smart steps on a detailed roadmap can help your community avoid three common infrastructure pitfalls" (November/December 2020), available at <https://www.caionline.org/CommonGround/Pages/Free%20articles/Danger-Ahead.aspx>. See also, Foundation for Community Association Research. *Breaking Point: Examining Aging Infrastructure in Community Associations*. (2020), available at <https://foundation.caionline.org/wp-content/uploads/2020/04/FoundationAgingInfrastructureReport.pdf>.

cooperative projects. This collaboration culminated in the release of the *CAI Condominium Safety Public Policy Report* in October 2021.¹⁰ The public policy report calls for revisions to local and state laws and industry practices in two major areas: (1) reserve studies and reserve funding and (2) building maintenance and structural integrity.

CAI Reserve Study and Funding Policy Position

CAI is actively working with state legislatures to enact laws accomplishing the following policy goals:

- Professionalize Reserve Study Industry—Require reserve studies be prepared by individuals with demonstrated professional expertise.
- Reserve Study Standards—Require reserve studies be prepared in compliance with National Reserve Study Standards.¹¹
- Mandatory Reserve Study and Periodic Update—Mandate reserve studies by law for planned communities, condominiums, and housing cooperatives with major shared components and infrastructure. Reserve studies must be updated on a regularly occurring periodic basis and include site visits by preparers.
- Mandatory Funding and Standardized Disclosure—Mandate reserve funding plans by law and provide associations reasonable opportunity to comply with funding plans. Require reserve funding levels be disclosed to association members in the general budgeting process and made available to homebuyers.
- Board Autonomy to Address Safety, Soundness, Structural Integrity, and Habitability—Provide association boards authority to adopt a special assessment or secure a loan without a vote of the association membership to fund repairs necessary to address emergent life safety issues.

CAI Building Maintenance and Structural Integrity Policy Position

CAI is actively working with local governments and state legislatures to enact laws accomplishing the following policy goals:

- Developer Requirements at Turnover—State law must require that developers, at or before turnover of the project to resident control:
 - Provide the association a complete set of final approved architectural and engineering design drawings used for construction and to obtain certificates of occupancy.
 - Document that the provided design drawings were used in project construction, inspections were conducted by qualified personnel, and inspections verified construction was completed in conformance with the provided design drawings.

¹⁰ Community Associations Institute. *Condominium Safety Public Policy Report: Reserve Studies and Funding, Maintenance, and Structural Integrity*. October 2021. Available at <https://www.caionline.org/HomeownerLeaders/DisasterResources/Documents/CAI%20Condo%20Safety%20Public%20Policy%20Report%2010%2021.pdf>.

¹¹ Community Associations Institute. *Reserve Specialist Designation: National Reserve Study Standards*. March 2018. Available at <https://www.caionline.org/LearningCenter/credentials/Documents/RS%20Designation%20National%20Reserve%20Study%20Standards.pdf>

- Provide the association a preventative maintenance manual that includes a maintenance schedule and timeline for periodic building inspections.
- Require the developer to fund the maintenance plan through the regular operating budget or reserves, as is appropriate for each maintenance item, while the project is under developer control.
- **Building Inspections and Periodic Mandatory Inspections**—Mandate building inspections within five years of occupancy for new construction and within two years for projects more than 10 years old. Make periodic inspections mandatory by law at least every 10 years for projects more than 20 years old and every five years thereafter unless a prior inspection report recommends more frequent inspections.
- **Building Inspection Standard**—Building inspections shall be conducted by professional and licensed individuals with demonstrated expertise. Building inspections shall be conducted in conformance with the ACSE Standard SEI/ASCE 11-99 guidelines or any successor guidelines.¹²
- **Mandatory Communication to Governmental Authority**—All concerns affecting the safety, soundness, structural integrity, and habitability of a project identified by an inspection shall be promptly reported to competent local authorities in writing. Inspectors providing safety communications to local government authorities shall document the local government's receipt of the safety communication.

CAI Urges FHFA & Enterprise Support for State & Local Actions to Ensure Condominium & Cooperative Housing Safety

CAI recognizes the constraints that may encumber FHFA and the enterprises when communicating support for policies at the national, state, and local levels of government. CAI invites FHFA and the enterprises to support policy recommendations made by the panel of industry experts within these constraints.

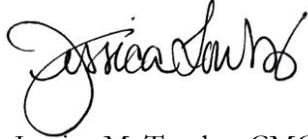
The policies recommended by CAI industry experts were developed through broad engagement with national and international industry stakeholders. CAI appreciated the opportunity to meet with and receive feedback from FHFA and enterprise staff in development of these recommendations. Enactment of these recommendations will ensure lasting reforms that protect the safety of condominium and cooperative homeowners and enhance the marketability of housing units.

CAI will continue working with FHFA, the enterprises, lenders, appraisers, and real estate agents to secure the safety and marketability of condominium and cooperative housing. CAI respectfully submits that a delay in the temporary guidance and enactment of recommendations of the CAI industry expert panel will achieve these outcomes.

¹² See current ASCE Standard SEI/ASCE 11-99 Guidelines for Structural Condition Assessment of Existing Buildings, available at <https://ascelibrary.org/doi/pdf/10.1061/9780784404324>

If you would like to discuss this matter further, please contact Dawn M. Bauman, CAI's senior vice president of government and public affairs, at dbauman@caionline.org or (703) 970-9224.

Sincerely,



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