

By order of the Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,
Deputy Secretary of the Board.
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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1241

RIN 2590-AB09

Enterprise Liquidity Requirements

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) requests comment on a proposed rule that would implement four liquidity and funding requirements for Fannie Mae and Freddie Mac (the Enterprises). The 2008 financial crisis demonstrated substantial weaknesses in the liquidity positions of the Enterprises. Liquidity and funding challenges were a significant contributing factor to establishment of the conservatorships in September 2008. The proposed rule builds on the improvements made to the U.S. banking supervision framework's regulation of institutions' liquidity requirements, and on experience since the 2008 financial crisis including with the more recent 2020 COVID-19-related financial market stress. FHFA believes that a robust Enterprise liquidity framework will improve market confidence in the Enterprises' ability to fulfill their mission and provide countercyclical support to housing finance markets in times of stress, while further minimizing the likelihood that they will need further taxpayer support. FHFA envisions that an appropriate framework would incent the Enterprises to build their liquidity portfolios in good times, so that it is available to be deployed as necessary in times of stress.

DATES: Comments must be received on or before March 9, 2021.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590-AB09, by any one of the following methods:

- *Agency Website:* www.fhfa.gov/open-for-comment-or-input.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also

send it by email to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590-AB09.

- *Hand Delivered/Courier:* The hand delivery address is Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AB09, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AB09, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Jamie Newell, Associate Director, Division of Resolutions, (202) 649-3530, Jamie.Newell@fhfa.gov; Ming-Yuen Meyer-Fong, Associate General Counsel, Office of General Counsel, (202) 649-3078, Ming-Yuen.Meyer-Fong@fhfa.gov; or Mark Laponsky, Deputy General Counsel, Office of General Counsel, (202) 649-3054, Mark.Laponsky@fhfa.gov. These are not toll-free numbers. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION: The proposed rule establishes four quantitative liquidity requirements that address the short, intermediate and long-term liquidity needs of the Enterprises. The short-term 30-day liquidity requirement is designed to promote the short-term resilience of the liquidity risk profile of the Enterprises, thereby improving the Enterprise's ability to absorb shocks arising from financial market and economic stresses. In addition, the proposed rule includes an intermediate-term 365-day liquidity requirement to ensure that the Enterprises manage their liquidity needs beyond the short-term, and to provide additional incentives to fund their activities in a more stable fashion. Finally, the proposed rule includes two longer-term liquidity and funding requirements that encourage the issuance of an appropriate mix of longer-term debt to reduce the

Enterprises' rollover risk. FHFA expects that this more appropriate mix of longer-term debt will also reduce the risk that the Enterprises would have to sell less-liquid assets in distressed markets.

Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. Copies of all comments will be posted without change, and will include any personal information you provide such as your name, address, email address, and telephone number, on the FHFA website at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

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I. Introduction

A. Background

Liquidity risk management is a part of any safety and soundness regulatory framework for financial institutions. The 2008 financial crisis demonstrated substantial weaknesses in the liquidity positions of the Enterprises, and liquidity and funding challenges were a significant contributing factor to establishment of the conservatorships in September 2008. The Enterprises had more than five trillion dollars in agency MBS and agency unsecured debt outstanding, held by various types of investors. Certain investors expressed significant concern about the creditworthiness of the Enterprises in the absence of an explicit guarantee from the U.S. government given the possible Enterprise losses arising from the 2008 housing crisis.

On September 6, 2008, the Enterprises were placed into conservatorship by FHFA. In connection with this action, the U.S. Department of the Treasury (U.S. Treasury) agreed to backstop losses by the Enterprises based on the terms of Senior Preferred Stock Purchase Agreements (PSPAs) entered into with each Enterprise in conservatorship. Even after receiving this public support from the U.S. government, the Enterprises had significant difficulty issuing longer term debt in late 2008. Their primary source of funding was through the issuance of short-term discount notes, most of which had maturities significantly less than one year. The Enterprises eventually increased their ability to issue longer-term debt in 2009 and 2010 as the U.S. Treasury amended the PSPAs and increased its support to the Enterprises.

Banks in the United States and globally also experienced difficulty meeting their obligations during the crisis due to a breakdown of funding markets. As a result, many governments and central banks across the world provided unprecedented levels of liquidity support to companies in the financial sector in an effort to sustain the global financial system. In the United States, the Board of Governors of the Federal Reserve System (Federal Reserve Board) and the Federal Deposit Insurance Corporation (FDIC) established various temporary liquidity facilities to provide sources of funding for a range of asset classes.

These severe market stress events came in the wake of a period characterized by ample liquidity in the U.S. financial system. The rapid reversal in market conditions and the declining availability of liquidity during the financial crisis illustrated both the speed with which liquidity can evaporate and the potential for protracted illiquidity during and following these types of market events. In addition, the recent COVID-19-related financial crisis reminded market participants of the speed at which the detrimental effects of a liquidity and funding crisis can manifest, as the majority of funding markets “locked up” in mid-March 2020. For example, the Enterprises had significant difficulty issuing longer-term fixed rate unsecured term debt in mid-March 2020, and that lack of investor demand lasted into June 2020. Market participants noted stress even in the U.S. Treasury markets.

In 2008, the Enterprises’ failure to adequately address these challenges was in part due to lapses in basic liquidity risk management practices, such as establishing an adequate portfolio of highly liquid assets to serve as a buffer in a crisis. During the 2008 financial crisis, the Enterprises maintained a liquidity portfolio largely composed of credit card asset backed securities, auto asset backed securities and other corporate unsecured debt, with minimal amounts of U.S. Treasury securities.

Recognizing the need for the Enterprises to improve their liquidity risk management and to control their liquidity risk exposures, in 2009 FHFA convened an interagency task force composed of examiners from the New York Federal Reserve Bank, the Federal Reserve Board, U.S. Treasury staff, Enterprise staff, and FHFA examiners. The discussions included draft standards being developed by U.S. banking and foreign jurisdictions to establish international liquidity standards. These standards included the principles based on supervisory expectations for liquidity risk management in the “Principles for Sound Liquidity Management and Supervision” (Basel Liquidity Principles). In addition to these principles, quantitative standards for liquidity were introduced to the U.S. banking supervision framework in the form of a liquidity coverage ratio (LCR) in 2013 (and subsequently approved in 2014) and a net stable funding ratio (NSFR) in 2016¹ (and subsequently approved in 2020).

¹ Following the 2008 financial crisis, the Basel Committee on Banking Supervision established two international liquidity standards as a part of the

After consultation with the U.S. banking regulators about these developing liquidity risk quantitative standards and how they might apply to the Enterprises, FHFA issued a supervisory letter in December 2009 that established minimum 30-day and 365-day liquidity requirements for Fannie Mae. FHFA issued similar supervisory guidance to Freddie Mac and added a requirement that Freddie Mac build out the capability to measure the cumulative net daily cash needs out to 365 days. FHFA’s supervisory letters also required that 50 percent of the Enterprises’ 30-day cumulative net cash need requirement be held in cash at the Federal Reserve or in U.S. Treasury securities, with the balance of the liquidity portfolio limited to other defined highly liquid assets. These FHFA supervisory requirements were adopted by the Enterprises as board liquidity risk limits and serve as the foundation for the currently proposed 30-day and 365-day liquidity requirements.

The most significant change made by the proposed rule to the Enterprises’ liquidity management regimes would be the addition of certain assumptions involving stressed cash inflows and outflows. Maintaining a sufficient portfolio of high quality liquid assets to meet these stressed cash outflow and limited cash inflow assumptions would position the Enterprises to provide mortgage market liquidity in times of market stress even if they cannot issue debt. In effect, FHFA proposes to require that certain contingencies, like additional cash outflows from buying loans through the cash window (also known as the whole loan conduit at Fannie Mae), and buying delinquent loans out of pools assuming a distressed mortgage market, be prefunded and backed by an appropriately-sized portfolio of U.S. Treasury securities and other high quality liquid assets.

FHFA standards for safe and sound operations for the Enterprises include those set forth in the Prudential Management and Operations Standards (PMOS)² at 12 CFR part 1236 Appendix. Standard 5 (Adequacy and

Basel III reform package: A short-term liquidity metric, the Basel LCR standard, to address the risk that banking organizations may face significantly increased net cash outflows in a short-term period of stress, and the Basel NSFR standard, to address structural funding risks at banking organizations over a longer-term horizon. See “Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools” available at <https://www.bis.org/publ/bcbs238.htm>; Basel III: the net stable funding ratio” available at <https://www.bis.org/bcbs/publ/d295.htm>.

² See 12 CFR part 1236 (Prudential Management and Operations Standards).

Maintenance of Liquidity and Reserves states that each Enterprise should establish a liquidity management framework, articulate liquidity risk tolerances; and establish a process for identifying, measuring, monitoring, controlling, and reporting its liquidity position and liquidity risk exposures. In addition, Standard 5 includes guidelines for conducting stress tests to identify sources of potential liquidity strain and guidelines for establishing contingency funding plans. The proposed rule amplifies that standard by setting forth detailed regulatory requirements.

Furthermore, FHFA's Corporate Governance regulation specifies obligations of Enterprise management and of the Board of Directors regarding, among other things, Enterprise risk management. *See* § 1239.4(a) (management of a regulated entity is by or under the direction of its Board of Directors, which is ultimately responsible for overseeing the management of the regulated entity). The Board of Directors of each Enterprise is responsible for approving and maintaining an enterprise-wide risk management program that, among other things, addresses the Enterprise's exposure to liquidity risk. *See* § 1239.11(a) ("Each regulated entity's board of directors shall approve, have in effect at all times, and periodically review an enterprise-wide risk management program that establishes the regulated entity's risk appetite, aligns the risk appetite with the regulated entity's strategies and objectives . . .").

In developing and adopting this proposed rule, FHFA exercises general regulatory and supervisory authority under section 1311(b) of the Federal Housing Enterprises Financial Safety and Soundness Act (Safety and Soundness Act) providing that each regulated entity "be subject to the supervision and regulation of the Agency." 12 U.S.C. 4511(b). By establishing minimum liquidity requirements and a supervisory framework to address shortfalls and exigencies requiring temporary increases to the required minimum liquidity, the proposed rule supports FHFA in carrying out its duty under section 1313(a) of the Safety and Soundness Act "to oversee the prudential operations of each regulated entity" and "to ensure that . . . each regulated entity operates in a safe and sound manner, including maintenance of adequate capital and internal controls." 12 U.S.C. 4513(a) (FHFA duties also include ensuring that the operations and activities of the

Enterprises foster "liquid" national housing finance markets). Section 1313(a) of the Safety and Soundness Act provides maintenance of adequate capital as an example but does not limit the scope of FHFA oversight of Enterprise prudential operations solely to ensuring that the Enterprises maintain adequate capital. Lack of adequate liquidity is a safety and soundness concern in itself but could also affect Enterprise capital. FHFA's oversight of prudential operations necessarily includes oversight of Enterprise liquidity.

The proposed rule also supports FHFA oversight of Enterprise prudential management, including compliance with standards pertaining to "adequacy and maintenance of liquidity and reserves." 12 U.S.C. 4513b(a)(5). This regulation is an additional standard on that subject. By implementing FHFA authority in a manner to permit, during market stress, temporary reductions in required minimum liquidity and, thus, to allow previously built-up liquidity to be deployed during periods of market stress, the proposed rule also supports Congressional intent for FHFA to maintain the "continued ability" of the Enterprises to accomplish their public missions. 12 U.S.C. 4501(2); *see also* 12 U.S.C. 1716 and 12 U.S.C. 1451 *note* (Enterprise public mission includes providing "ongoing assistance to the secondary market for residential mortgages . . . by increasing the liquidity of mortgage investments").

Current FHFA regulations do not require the Enterprises to meet a quantitative liquidity standard. Rather, FHFA evaluates the Enterprises' methods for measuring, monitoring, and managing liquidity risk on a case-by-case basis in conjunction with its supervisory processes and guidance. On August 22, 2018, FHFA issued Advisory Bulletin (AB) 2018-06 titled "Liquidity Risk Management". The Liquidity Risk Management AB incorporates liquidity risk management elements consistent with the Basel Liquidity Principles. The Liquidity Risk Management AB also emphasizes the central role of corporate governance, cash-flow projections, stress testing, ample liquidity resources, intra-day funding risk management, and formal contingency funding plans as necessary tools for effectively measuring and managing liquidity risk. However, as guidance, these FHFA pronouncements are not quantitative and lack the force of a duly adopted regulation.

The proposed rule would enhance the supervisory efforts and liquidity risk management practices described in AB 2018-06, which are aimed at measuring

and managing liquidity risk, by implementing four minimum quantitative liquidity requirements. The proposed rule would establish a minimum short-term liquidity requirement that would be similar to the LCR approved by the Office of the Comptroller of the Currency, Department of the Treasury (OCC), Federal Reserve Board, and FDIC (U.S. banking regulators), with some modifications to reflect characteristics and risks of specific aspects of the Enterprises businesses, as described in this preamble.

FHFA notes that the U.S. banking regulators recently issued a final NSFR rule (NSFR final rule) that was initially included in the Basel liquidity framework when it was first published in 2010. While the Basel III LCR is focused on measuring liquidity resilience over a short-term period of severe stress, the NSFR final rule is intended to promote resilience by creating additional incentives for banking organizations and other financial companies to fund their activities with more stable sources and encouraging a sustainable maturity structure of assets and liabilities. Similarly, to encourage the Enterprises to issue appropriate amounts of longer-term debt and maintain a sustainable debt term structure, FHFA is proposing a 365-day intermediate term and two longer-term liquidity requirements to provide quantitative limits on the liquidity and funding risks of the Enterprises. A key objective of these liquidity and funding requirements is to ensure that the Enterprises have sufficient long-term funding to minimize rollover risk and fund less-liquid assets with longer-term debt and thus avoid having to sell such less-liquid assets into distressed markets.

B. Overview of the Proposed Rule

FHFA is requesting comment on a proposed rule that would implement four liquidity and funding requirements. The proposed rule would also require daily reporting to FHFA of the Enterprises' liquidity positions and other information, as well as monthly disclosures to the public.

- The short-term (30-day) requirement is substantially similar to the U.S. banking regulator's LCR final rule (LCR final rule)³ and would require the Enterprises to maintain a liquidity portfolio composed of high quality liquid assets large enough to cover the

³ See 79 FR 61440 (October 10, 2014) (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards—OCC 12 CFR part 50; Federal Reserve Board 12 CFR part 249; FDIC 12 CFR part 329).

sum of: (i) The highest cumulative daily net cash outflows over 30 calendar days under certain specified stressed market assumptions, including a complete inability of the Enterprises to issue debt; and (ii) An excess requirement in the amount of \$10 billion.

- The intermediate-term (365-day) liquidity requirement is designed to promote intermediate-term management of liquidity risks and to encourage an appropriate amount of longer-term funding to reduce debt rollover risks. It is substantially similar to the 30-day requirement and based on similar stressed assumptions, except that certain stressed assumptions last 365 days. The proposed rule would require the Enterprises to maintain a portfolio of high quality liquid assets, together with mortgage-backed securities (MBS) eligible to be pledged as collateral to the Fixed Income Clearing Corporation (FICC) (subject to a haircut), large enough to cover the worst daily cumulative net cash outflow over 365 calendar days under those stress assumptions. FHFA proposes not to include an excess requirement in connection with the 365-day liquidity requirement.

- The first long-term liquidity requirement is designed to encourage an appropriate amount of long-term unsecured debt to support less-liquid retained portfolio assets so that the Enterprises have the ability to hold such assets for at least a year without having to sell them into potentially distressed markets. Intended to be a simple, transparent metric, this requirement is conceptually similar to the NSFR proposed rule, recently finalized, and would require the Enterprises to maintain a minimum ratio of long-term unsecured debt to less-liquid assets exceeding 120 percent.⁴

- The second long-term requirement is also designed to encourage the Enterprises to issue an appropriate amount of longer-term unsecured debt to support all retained portfolio assets, not just less-liquid assets. This requirement sets a minimum ratio for the duration of an Enterprise's unsecured agency debt over the duration of all its retained portfolio assets and requires that such ratio exceed 60 percent.

As described earlier, the proposed rule's four quantitative minimum liquidity requirements build upon the U.S. banking supervision framework.

⁴ See **Federal Register** notice, "Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements," Federal Reserve Board, October 20, 2020. Access at: <https://www.federalreserve.gov/newsreleases/pressreleases/files/bcreg20201020b1.pdf>.

These new liquidity and funding requirements also build upon existing Enterprise board liquidity risk limits and methodologies used by the Enterprises to assess exposures to contingent liquidity events but are more conservative than the Enterprises' existing board risk limits. The proposed rule would also complement existing FHFA supervisory guidance provided in AB 2018-06, and add to FHFA's standards for safe and sound operations for the Enterprises as set forth in the PMOS.

Given that the Enterprises do not have access to the Federal Reserve Discount Window or a stable customer deposit base, FHFA proposes to define high quality liquid assets as: (i) Cash held in a Federal Reserve account; (ii) U.S. Treasury securities; (iii) Short-term secured loans through U.S. Treasury repurchase agreements that clear through the FICC or are offered by the Federal Reserve Bank of New York; and (iv) A limited amount of unsecured overnight deposits with eligible U.S. banks.

For purposes of the 365-day liquidity requirement only, FHFA proposes to allow the Enterprises to augment the high quality liquid asset portfolio discussed above with cash inflows from pledging FICC-eligible collateral using a repurchase agreement that clears through the FICC as a source of cash to meet the 365-day requirement.

The enterprise-wide cumulative net cash flows includes all daily inflows and outflows of cash from any corporate source and use (as detailed below) and includes, but is not limited to, mortgage operations that use cash, like MBS payments to investors, repayment to servicers for advances of principal and interest (P&I), advancement of P&I to MBS investors, the daily purchase of loans, and any other uses of cash and excludes any cash inflows from expected unsecured debt issuance.

As further described below, the measure of the enterprise-wide cumulative daily net cash flows is meant to include certain stress events experienced during the recent financial crisis, and to position the Enterprises to continue to provide mortgage market liquidity through such stresses. These stressed cash flow assumptions included in the proposed rule take into account the potential impact of idiosyncratic and market-wide shocks, including those that would result in: (1) A complete loss of the Enterprise's ability to issue unsecured debt during the relevant period; (2) An increased cash outflow associated with additional daily single-family and multifamily cash window or whole loan conduit

purchases to support the mortgage market, particularly small lenders, during a crisis; (3) A decreased cash inflow due to the assumed increase in the number of borrowers who fail to make their scheduled principal, interest, tax, and insurance payments to the servicers under a stressed economic environment; (4) An increased cash outflow requirement to fund delinquent loan buyouts under a stressed economic environment; (5) An increased cash outflow based on the Enterprise's best estimate of the collateral needed to be posted to support FICC-related activities for the next month; (6) An increased cash outflow from unscheduled draws on committed liquidity facilities that the Enterprises have provided to their clients related to variable-rate demand bonds; and (7) A decreased cash inflow due to the assumed failure of the Enterprise's five top non-bank servicers by unpaid principal balance (UPB) to make timely principal, interest, and tax, and insurance payments to the Enterprises during the next month under a stressed economic environment. To determine decreased cash inflows and increased cash outflows due to higher numbers of delinquent borrowers and to higher loan buy-out from MBS trusts, the proposed rule would require the Enterprises to formulate their projections assuming stressed conditions corresponding to the more severe of FHFA's Dodd-Frank Act Stress Test (DFAST) assumptions or other supervisory stress assumptions as ordered by FHFA.

The proposed rule also sets forth two long-term liquidity and funding requirements. The objective of these two liquidity and funding requirements is to reduce unsecured debt rollover risk, ensure that the Enterprises maintain sufficient long-term unsecured debt so they do not have to sell less-liquid assets into distressed markets, incent the Enterprises to issue an appropriate amount of long-term unsecured debt, and incent the Enterprises to reduce the amount of less-liquid assets funded by unsecured debt held within the retained portfolio that are not eligible collateral for the FICC.

The proposed rule, as described below, would require each Enterprise to report to FHFA its compliance with the four liquidity requirements daily, along with additional information regarding its liquidity position and assumptions as specified by FHFA. The Enterprises shall submit such reports at the close of each business day, treated as Day 0, reflecting the liquidity positions and other required information as of 6 p.m. EST on Day 0. Such reports shall include, at a minimum, the key stress

scenario assumptions discussed below, including a summary of the respective cash flows and other significant information and any other assumptions used to calculate the four liquidity requirements. In some cases, this may require supplemental reports to explain individual key stress cash flows, like the purchases of delinquent loans out of pools, the purchases of cash window and whole loan conduit loans and the reduced cash flows arising from increased numbers of delinquent borrowers not making scheduled principal, interest, tax, and insurance payments.

The proposed rule would require daily minimum liquidity reporting about the short-term, intermediate-term and long-term liquidity and funding profile of the Enterprises to management, and to FHFA supervisory personnel. FHFA, by order, may require supplemental reporting. With this information, the Enterprise's management and supervisors would be better able to assess the Enterprise's ability to meet its projected liquidity needs during periods of liquidity stress; take appropriate actions to address liquidity needs; and, in situations of failure, implement an orderly resolution of the Enterprise.

As noted above, for the 30-day requirement the proposed rule would require the Enterprises to maintain a high quality liquid asset portfolio sufficient in size to meet the highest cumulative net cash need, plus an additional \$10 billion excess amount. FHFA recognizes that certain market circumstances, for example, may require that an Enterprise be provided flexibility to meet a reduced 30-day liquidity minimum in order to fund severe stress liquidity needs and to support continued liquidity in the secondary mortgage markets. Therefore, the proposed rule would provide for temporary reductions in minimum liquidity requirements to address economic or market stress conditions. Specifically, it would provide for FHFA to make a determination that, due to economic or market conditions, temporary adjustments to reduce the minimum liquidity requirements are appropriate to address those conditions. FHFA's exercise of this authority would further Enterprise public purposes in supporting secondary mortgage market liquidity consistent with safety and soundness.

The proposed rule would also, as described below, establish a supervisory framework to address Enterprise liquidity shortfalls and non-compliance with the minimum liquidity requirements when an Enterprise's 30-

day liquidity coverage metric falls below the \$10 billion excess requirement or any of the other three liquidity and funding requirements.

Under the proposed rule, an Enterprise would be required to notify FHFA on any business day that any of the four liquidity requirements is not met, triggering a requirement for the Enterprise to submit a plan for approval to FHFA to achieve compliance, unless FHFA instructs otherwise. Alternatively, if FHFA determines that the Enterprise is otherwise non-compliant with the requirements of this part, FHFA may also require the Enterprise to submit a plan to achieve compliance. FHFA may take additional supervisory or enforcement action at its discretion to address Enterprise non-compliance.

In addition, if FHFA determines that, due to economic, market, or Enterprise-specific circumstances, temporary modified Enterprise liquidity and funding requirements above those established under this part are necessary or appropriate for an Enterprise, a process would be available to modify the minimum requirements. In such an instance, FHFA will notify the Enterprise in writing of the proposed modified Enterprise liquidity and funding requirements and provide the Enterprise with an opportunity to respond before making a determination as set forth in proposed § 1241.31.

These procedures, which are described in further detail in this preamble, are intended to enable FHFA to monitor and respond appropriately to the particular economic, market, or Enterprise-specific circumstances requiring an adjustment to the minimum liquidity requirements. FHFA invites public comment on all aspects of the proposed procedures for FHFA to respond timely and appropriately to address economic, market, Enterprise-specific, or other circumstances affecting Enterprise liquidity, safety and soundness, and ability to meet their public purposes.

The proposed rule's four liquidity requirements would use Enterprise projections based on stressed market assumptions. While the short-term and intermediate-term liquidity requirements would impose specific stress assumptions, FHFA expects the Enterprises to maintain robust stress testing frameworks that incorporate additional scenarios, like lower rate environments that might trigger calling debt. The Enterprises should use these additional scenarios in conjunction with the proposed rule's liquidity requirements to appropriately determine their board and management liquidity

and funding buffers. FHFA notes that the four proposed liquidity requirements are minimum requirements, and that organizations like the Enterprises that pose systemic risk to the U.S. financial system, or whose liquidity stress testing indicates a need for higher liquidity and funding buffers, may need to take additional steps beyond meeting the proposed rule's minimum requirements in order to meet supervisory expectations for safe and sound operation. Moreover, nothing in the proposed rule would limit the authority of FHFA under any other provision of law or regulation to take supervisory or enforcement actions, including actions to address unsafe or unsound practices or conditions, deficient liquidity levels, or violations of law.

The proposed rule, once finalized, would be effective as of September 2021. FHFA requests comment on all aspects of the proposed rule, including comment on the specific issues raised throughout this preamble. FHFA requests that commenters provide detailed qualitative or quantitative analysis, as appropriate, as well as any relevant data and impact analysis to support their positions.

II. Liquidity and Funding Requirements

As discussed above, the proposed rule would establish four quantitative liquidity requirements for the Enterprises, as well as certain qualitative requirements for risk management practices. The four quantitative liquidity requirements would be measured daily and supported by detailed management reporting:

- A short-term 30-day liquidity requirement based on: (i) The Enterprise's highest cumulative daily net cash outflows over 30 calendar days under certain specified stressed market assumptions, including a complete inability to issue debt; and (ii) An excess requirement in the amount of \$10 billion;

- An intermediate 365-day liquidity requirement based on the Enterprise's highest cumulative daily net cash outflows over 365 calendar days under certain specified stressed market assumptions, including a complete inability of the Enterprises to issue debt;

- A simple long-term liquidity and funding requirement based on the amount of an Enterprise's long-term unsecured debt divided by the amount of its less-liquid assets, as defined below; and

- A second, model-based long-term liquidity and funding requirement based on an Enterprise's spread duration of its

unsecured debt divided by the spread duration of its retained portfolio assets.

The short-term and intermediate-term requirements are cashflow based and will be discussed in this section II.A, while the two long-term liquidity and funding requirements are calculated based on defined ratios discussed in section II.B.

A. Short-Term and Intermediate Term Liquidity Requirements

The purpose of these cashflow-based requirements is to establish minimum short-term (discussed throughout as the 30-day requirement) and intermediate-term (discussed throughout as the 365-day requirement) liquidity requirements for the Enterprises. These two requirements are determined based on cash flows under a series of stress assumptions including, among other things, that the Enterprises are unable to access the debt markets for an extended period and, as a result, must fund their enterprise-wide net cash needs, including funding mortgage operations, with an appropriately sized portfolio of high quality liquid assets, as defined below.

1. High Quality Liquid Assets

Given the lack of Enterprise access to the discount window at any Federal Reserve Bank and the need to provide mortgage market liquidity in a crisis, FHFA proposes to significantly limit those assets that qualify as high quality liquid assets for the liquidity portfolio under this proposed rule. As a result, FHFA proposes that high quality liquid assets be limited to cash held in a Federal Reserve bank account, U.S. Treasury securities, U.S. Treasury repurchase agreements where the Enterprise lends cash secured by U.S. Treasury securities cleared through the FICC or as offered by the Federal Reserve Bank of New York, and a limited amount of unsecured overnight bank deposits with eligible U.S. banks.

To be included in high quality liquid assets, an asset would be required to be unencumbered as provided under the proposed rule. First, the asset must be free of legal, regulatory, contractual, or other restrictions on the ability of an Enterprise to monetize the asset. FHFA believes that, as a general matter, high quality liquid assets should only include assets that could be converted easily into cash. Second, the asset cannot have been pledged, explicitly or implicitly, to secure or provide credit-enhancement to any transaction.

a. Federal Reserve Bank Balances

In the United States, Federal Reserve Banks are generally authorized under

the Federal Reserve Act to maintain balances only for “depository institutions” and for other limited types of organizations, like the Enterprises. Under the proposed rule, all balances the Enterprises maintain at a Federal Reserve Bank would be considered a high quality liquid asset.

b. U.S. Treasury Securities

The proposed rule would include the fair market value of securities issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Treasury. U.S. Treasury securities have exhibited high levels of liquidity even in times of extreme stress to the U.S. financial system, and typically are the securities that experience the most “flight to quality” when investors react in a crisis.

FHFA proposes that U.S. Treasury securities qualify as a high quality liquid asset because they are easily and immediately convertible into cash during times of market stress. U.S. Treasury securities have active outright sale or repurchase agreement markets at all times with significant diversity in market participants as well as high volume. U.S. Treasury securities have exhibited this market-based liquidity characteristic historically, including evidence during the 2008 financial crisis and the more recent 2020 COVID-19-related financial market stress. Even during these recent crises, U.S. Treasury securities demonstrated low bid-ask spreads, high trading volumes, a large and diverse number of market participants, and other factors. Diversity of U.S. Treasury security market participants, on both the buy and sell sides, is particularly important because it tends to reduce market concentration and is a key indicator that a market will remain liquid. Also, the presence of multiple committed market makers in U.S. Treasury securities is another sign that a market is liquid.

c. U.S. Treasury Repurchase Agreements Cleared Through the FICC

The proposed rule would allow the Enterprises to treat certain secured loans backed by U.S. Treasury securities as highly liquid assets. Specifically, if the Enterprise lends cash secured by U.S. Treasury securities in a repurchase agreement cleared through the FICC (FICC Treasury repurchase agreements) then it may treat those assets as highly liquid. As the collateral backing investments in FICC Treasury repurchase agreements is legally allowed to be rehypothecated, the proposed rule assumes that the FICC Treasury repurchase agreements are fungible with U.S. Treasury securities

and would be counted as such. The proposed rule limits any such investment in FICC Treasury repurchase agreements to those with a remaining maturity term no longer than the greater of: (i) 15 days; or (ii) The number of days until the next agency Uniform Mortgage Backed Security (UMBS) principal and interest payment date which is typically on, or the next business day after, the 25th day of the month.⁵

Under the proposed rule, for collateral received in FICC Treasury repurchase agreements where the Enterprise has rehypothecation rights to withdraw the asset without remuneration at any time during a 30 calendar-day stress period, such collateral if rehypothecated would be included in high quality liquid assets. If the collateral can be substituted with non-U.S. Treasury securities, then the Enterprises cannot count them as high quality liquid assets.

In addition, the Federal Reserve Bank of New York offers a program whereby the Enterprises are eligible to lend cash supported by repurchase agreements backed by U.S. Treasury securities. If an Enterprise lends cash in a secured transaction through this Federal Reserve Bank of New York reverse repurchase agreement program, the proposed rule would allow the Enterprise to treat these as high quality liquid assets. The proposed rule would similarly limit the maturity of secured lending transactions to the greater of 15 days or the number of days until the next agency UMBS principal and interest payment date.

d. Overnight Unsecured Deposits in Eligible Banks

The proposed rule would allow the Enterprises to include as high quality liquid assets a limited amount of unsecured overnight bank deposits provided they are held at a U.S. bank that is subject to quarterly reporting under the Federal Reserve System's FR Y-15 reporting requirements and has at least \$250 billion in assets. FHFA believes these overnight deposits can be readily transferred to the Enterprises' Federal Reserve bank accounts early the following morning, which can help the Enterprises better manage intra-day funding requirements. The proposed rule would limit such overnight deposits to a maximum of \$10 billion and require that each Enterprise have adequate single-name counterparty credit risk limits in place.

⁵ Appropriate adjustment should be made for the number of days for non-UMBS MBS, such as MBS backed by adjustable rate mortgages and non-exchanged Freddie Mac Participation Certificates (PCs).

Question 1. Is allowing any amount of unsecured overnight deposits to qualify as highly liquid assets appropriate? If so, is the limitation to banks that are subject to the Federal Reserve Systems' FR Y-15 reporting requirements and have at least \$250 billion in assets appropriate? Would greater or lesser restrictions be appropriate?

2. Non-Allowable Investments and Wrong-Way Risk

The proposed rule intentionally limits Enterprise investment in non-mortgage related investments to those high quality liquid assets discussed above. In addition, certain assets that may be highly liquid under normal conditions could experience "wrong-way" risk and could become less liquid during a period of stress and would not be appropriate for consideration as high quality liquid assets. Wrong-way risk is commonly defined as the risk that occurs when exposure to a counterparty is adversely correlated with the credit quality of that counterparty.¹ Securities issued or guaranteed by the Enterprises have been more prone to lose value and, as a result, become less liquid and lose value in times of liquidity stress due to the high correlation between the health of the Enterprises and the health of the housing markets generally. This correlation was evident during the 2008 financial crisis, as most Enterprise unsecured debt and Enterprise MBS traded at significant discounts for a prolonged period. Because of this high potential for wrong-way risk, the proposed rule would exclude assets issued by the Enterprises from high quality liquid assets.

FHFA understands that most securities issued and guaranteed by the Enterprises consistently trade in very large volumes and generally have been highly liquid. However, the Enterprises remain privately owned corporations, and their obligations do not have the explicit guarantee of the full faith and credit of the United States. The U.S. banking regulatory agencies have long held the view that obligations of the Enterprises should not be accorded the same treatment as obligations that carry the explicit guarantee of the U.S. government and, under the U.S. banking regulatory agencies' capital regulations, have currently and historically assigned a 20 percent risk weight to their obligations and guarantees, rather than the zero percent risk weight assigned to securities guaranteed by the full faith and credit of the United States.

Similarly, the proposed rule does not allow the Enterprises to lend cash through repurchase agreements secured by agency MBS even through strong

counterparties, like the FICC. Enterprise MBS, even short-term repurchase agreements secured by agency MBS, that may be highly liquid under normal conditions can experience wrong-way risk and could become less liquid during a period of stress. FHFA does not think it would be appropriate to consider agency MBS, or repurchase agreements backed by agency MBS, to be included as a high quality liquid asset for the 30-day liquidity requirement for the Enterprises.

Question 2. Does the proposed exclusion of repurchase agreements secured by agency MBS appropriately address the concerns expressed above? Are there other ways that FHFA could address those concerns, including wrong-way risk? If so, FHFA encourages commenters to provide historical evidence, including evidence during recent periods of market liquidity stress, of low bid-ask spreads, high trading volumes, a large and diverse number of market participants, and other factors.

3. Operational Requirements for High Quality Liquid Assets

Under the proposed rule, to be eligible to be included as a high quality liquid asset, an asset would need to meet the following operational requirements. These operational requirements are intended to better ensure that an Enterprise's high quality liquid assets can in fact be liquidated in times of stress. Several of these requirements relate to the monetization of an asset, by which FHFA means the receipt of funds from the outright sale of an asset or from the transfer of an asset pursuant to a repurchase agreement.

First, an Enterprise would be required to have the operational capability to monetize the high quality liquid assets. This capability would be demonstrated by: (1) Implementing and maintaining appropriate procedures and systems to monetize the asset at any time in accordance with relevant standard settlement periods and procedures; and (2) Periodically monetizing a sample of high quality liquid asset that reasonably reflects the composition of the covered company's total high quality liquid asset portfolio, including with respect to asset type, maturity, and counterparty characteristics. This requirement is designed to ensure an Enterprise's access to the market, the effectiveness of its processes for monetization, and the availability of the assets for monetization and to minimize the risk of negative signaling during a period of actual stress. FHFA would monitor the procedures, systems, and periodic

sample liquidations through its supervisory process.

Second, an Enterprise would be required to implement policies that require all high quality liquid assets to be under the control of the management function of the Enterprise that is charged with managing liquidity risk. To do so, an Enterprise would be required either to segregate the assets from other assets, with the sole intent to use them as a source of liquidity, or to demonstrate its ability to monetize the assets and have the resulting funds available to the liquidity risk management function without conflicting with another business or risk management strategy. This requirement is intended to ensure that a central function within the Enterprise has the authority and capability to liquidate high quality liquid asset to meet its obligations in times of stress without exposing the Enterprise to risks associated with specific transactions and structures. There were instances at specific firms during the 2008 financial crisis where unencumbered assets of the firms were not available to meet liquidity demands because the firms' treasury functions were restricted or did not have access to such assets.

Third, an Enterprise would be required to implement and maintain policies and procedures that determine the composition of the assets in its high quality liquid asset portfolio on a daily basis by: (1) Identifying where its high quality liquid assets are held by legal entity, geographical location, currency, custodial or bank account, and other relevant identifying factors; and (2) Determining that the assets included as high quality liquid assets for liquidity compliance continue to qualify as high quality liquid assets under the proposed rule.

FHFA notes that assets that meet the criteria of high quality liquid assets and are held by an Enterprise as "trading", "available-for-sale", or "held-to-maturity" can be included as high quality liquid assets, regardless of such designations.

4. Cash Flows

The proposed rule would require the Enterprises to meet the following cash flow-based metrics by holding high quality liquid assets (as defined above) that equal or exceed, under the seven stressed cash flow scenarios described below, the following:

- 30-day Requirement. The sum of: (i) The Highest Cumulative Daily Net Cash Outflows over 30 calendar days under certain specified stressed market assumptions, including a complete inability of the Enterprises to issue

unsecured debt; and (ii) \$10 billion (*i.e.*, the Daily Excess Requirement).

- 365-day Requirement. The Highest Cumulative Daily Net Cash Outflows over 365 days, including cash inflows from possible (though not scheduled) FICC MBS repurchase transactions where the Enterprise pledges its FICC-eligible collateral (assuming a 15 percent haircut) to raise cash on its worst cumulative net cash outflow day. The proposed rule assumes a conservative haircut of 15 percent given FHFA's wrong-way risk concerns. The proposed rule limits this ability to pledge FICC-eligible MBS collateral solely for purposes of meeting the 365-day requirement; such collateral is not eligible for purposes of meeting the 30-day liquidity requirement. Moreover, the proposed rule does not include non-FICC-eligible collateral as eligible for meeting any of the liquidity requirements.

To determine the 30-day requirement as of calculation date, the proposed rule would require an Enterprise to calculate its highest stressed cumulative net cash outflow amount for the next 30 calendar days following the calculation date, thereby establishing the dollar value that must be offset by the high quality liquid asset portfolio. Similarly, to determine the 365-day requirement as of calculation date, the proposed rule would require an Enterprise to calculate its highest stressed cumulative net cash outflow amount for the next 365 calendar days following the calculation date, thereby establishing the dollar value that must be offset by the high quality liquid asset portfolio combined with cash inflows from possible (though not scheduled) secured borrowings using FICC cleared repurchase transactions where the Enterprise raises cash by pledging its FICC-eligible collateral (assuming a 15 percent haircut) on its worst cumulative net cash outflow day.

Under the proposed rule, the highest cumulative daily net cash outflow amount would be the dollar amount on the day within a 30 calendar-day and 365-day stress period that has the highest amount of net cumulative cash outflows, respectively. The FHFA believes that using the highest cumulative daily calculation (rather than using total cash outflows over a 30 calendar-day or 365-day stress period) is necessary because it takes into account potential timing mismatches between an Enterprise's outflows and inflows, that is, the risk that an Enterprise could have a substantial amount of contractual inflows late in a 30 calendar-day stress period while also having substantial outflows earlier in the same period. Such mismatches could threaten the liquidity of the Enterprise. By requiring the recognition of the highest net cumulative outflow day of a particular 30 calendar-day stress period and a particular 365-day stress period, FHFA believes that the proposed liquidity requirements would better capture an Enterprise's liquidity risk and help foster more sound liquidity management.

The proposed rule would require that the high quality liquid asset portfolio be sufficient to fund all enterprise-wide net cash flows, which includes all corporate daily inflows and outflows of cash from whatever source and includes, but is not limited to, mortgage operations that use cash such as MBS payments to investors, reimbursement of servicer advances of P&I payments to the MBS trusts, the continued purchase of loans through the cash window or whole loan conduit, increases in collateral requirements arising from Enterprise derivative positions, and other uses of corporate cash.

Sources of cash include principal and interest payments from servicers that include guaranty fees from the single-family business, including the

Temporary Payroll Tax Cut Continuation Act of 2011 fees. Other sources of cash, like existing To-be-announced (TBA) contracts in place as of 6 p.m. EST on Day 0, are assumed to be valid and represent cash inflows on the contract settlement date. Other sources of cash for the 365-day liquidity requirement include the borrowing of cash secured by FICC-eligible securities post 15 percent haircut. Less-liquid assets, like non-performing loans and re-performing loans, are not considered sources of cash unless the assets have been sold and are awaiting settlement. In this case, the Enterprise may assume that the cash inflow occurs on the expected settlement date.

With respect to any MBS trust-related cash flows, an Enterprise must include, at a minimum, the net corporate cash flows to and from the MBS trust(s). The proposed rule stresses the expected corporate cash flows by excluding expected cash inflows from expected future debt issuance (with an exception for Enterprise debt issued but not yet settled, described below), and by imposing six other stress assumptions that increase cash outflows or limit cash inflows (see discussion below).

The proposed rule defines "Daily Net Cash Flows" to mean, for any day, the total cash outflows minus the total cash inflows for that day. The proposed rule further defines the "Cumulative Daily Net Cash Outflows" to mean, for any day, the sum of the Daily Net Cash Flows for each day in the period up through and including the measurement day. The proposed rule further defines the "Highest Cumulative Daily Net Cash Outflows" to mean, with respect to either the 30-day or 365-day metric, the maximum Cumulative Daily Net Cash Outflows amount over the respective period, see the 30-day example in Table 1 below.

TABLE 1—EXAMPLE DETERMINATION OF HIGHEST DAILY CUMULATIVE NET CASH OUTFLOW

[\$B]

Day	Cash outflows	Cash inflows	Daily net cash outflow	Daily cumulative net cash outflow
Day 1	\$100	\$90	\$10	\$10
Day 2	40	45	(5)	5
Day 3	25	30	(5)	.....
Day 4	50	40	10	10
Day 5	90	70	20	30
Day 6	60	60	.....	30
Day 7	40	50	(10)	20
Day 8	60	50	10	30
Day 9	50	50	.....	30
Day 10	25	30	(5)	25
Day 11	30	25	5	30
Day 12	40	40	.....	30
Day 13	40	75	(35)	(5)

TABLE 1—EXAMPLE DETERMINATION OF HIGHEST DAILY CUMULATIVE NET CASH OUTFLOW—Continued

[\$B]

Day	Cash outflows	Cash inflows	Daily net cash outflow	Daily cumulative net cash outflow
Day 14	40	40	.....	(5)
Day 15	20	15	5	.....
Day 16	45	25	20	20
Day 17	10	20	(10)	10
Day 18	90	150	(60)	(50)
Day 19	40	35	5	(45)
Day 20	50	15	35	(10)
Day 21	30	20	10	.....
Day 22	30	10	20	20
Day 23	10	20	(10)	10
Day 24	15	15	.....	10
Day 25	140	70	70	80
Day 26	20	25	(5)	75
Day 27	40	45	(5)	70
Day 28	10	10	.....	70
Day 29	30	30	.....	70
Day 30	25	30	(5)	65

Table 1 illustrates the determination of the total net cash outflow amount using hypothetical daily outflow and inflow calculations for a given 30 calendar-day stress period. Based on the example provided, the peak net cash need would occur on Day 25, resulting in a Highest Daily Cumulative Net Cash Outflow of \$80 billion.

The proposed rule does not permit an Enterprise to double count items in this computation. For example, if the fair market value of an asset is included as a part of the highly liquid asset portfolio, such asset may not also be counted as a cash inflow on its maturity date.

Question 3. Does the method FHFA is proposing for cumulative net cash outflows appropriately capture the potential mismatch between the timing of inflows and outflows under the 30 calendar-day stress period? Why or why not?

5. Daily Excess Requirement

For purposes of the 30-day requirement, the proposed rule would require that the Enterprises must maintain a minimum daily excess requirement of at least \$10 billion for each day within the first 30 days (aka the Daily Excess Requirement). The purpose of this Daily Excess Requirement is to address the possibility of errors and other unforeseen operational errors.

Question 4. For the 30-day requirement, does the proposed \$10 billion Daily Excess Requirement adequately address possible forecasting errors and other residual liquidity risks? Should FHFA consider a larger Daily Excess Requirement than \$10 billion? A smaller amount?

For purposes of the 365-day requirement, the proposed rule would require no minimum Daily Excess Requirement. FHFA does not propose a daily excess requirement for the 365-day requirement because of the longer-term nature of the requirement.

Question 5. For the 365-day requirement, should FHFA consider a Daily Excess Requirement like the one for the 30-day requirement? If so, what would be an appropriate Daily Excess Requirement for the 365-day minimum liquidity requirement?

6. Stressed Cash Flow Scenarios

As noted above, the proposed rule would require each Enterprise to forecast expected corporate cash outflows and expected cash inflows from all sources. As described below, the proposed rule would further require that the measure of the enterprise-wide cumulative net cash flows reflects the impact of the stress events.

Given the importance of the Enterprises as key providers of mortgage market liquidity, the proposed rule would assume seven stressed cash outflow and inflow assumptions. These stressed cash flow assumptions included in the proposed rule take into account the potential impact of idiosyncratic and market-wide shocks, including those that would result in:

(1) A complete loss of Enterprise ability to issue unsecured debt during the relevant period (see section below entitled “Complete Loss of Ability to Issue Unsecured Debt”);

(2) An increased cash outflow associated with additional daily single-family and multifamily cash window or whole loan conduit purchases to support the mortgage market,

particularly small lenders, during a crisis (see section below entitled “Cash Window or Whole Loan Conduit Purchases”);

(3) A decreased cash inflow due to the assumed increase in the number of borrowers who fail to make their scheduled principal, interest, tax, and insurance payments to the servicers under a stressed economic environment (see section entitled “Borrower Scheduled Principal, Interest, Tax, and Insurance Remittances”);

(4) An increased cash outflow requirement to fund delinquent loan buyouts under a stressed economic environment (see section entitled “Delinquent Loan Buyouts from MBS Trusts”);

(5) An increased cash outflow based on the Enterprise’s best estimate of the collateral it will be required to post with the FICC for the next month (see section entitled “FICC Collateral Needs”);

(6) An increased cash outflow from unscheduled draws on committed liquidity facilities that the Enterprises have provided to their clients related to variable-rate demand bonds (see section entitled “Liquidity Facility for Variable-Rate Demand Bonds”); and

(7) A decreased cash inflow due to the assumed failure of the Enterprise’s five top non-bank servicers by UPB to make timely principal, interest, tax, and insurance payments to the Enterprises during the next month under a stressed economic environment (see section entitled “Non-Bank Seller/Servicer Shortfalls”).

To determine decreased cash inflows and increased cash outflows due to higher numbers of delinquent borrowers and to higher loan buy-out from MBS trusts, the proposed rule would require

the Enterprises to formulate their projections assuming stressed conditions corresponding to the more severe of FHFA's DFAST assumptions or other supervisory assumptions as ordered by FHFA.

a. Complete Loss of Ability To Issue Unsecured Debt

The proposed rule, specifically the 30-day and 365-day liquidity requirements, would require the Enterprises to assume that they could not issue any new unsecured debt and receive the proceeds. The proposed rule would allow the Enterprises to include cash inflows from unsecured debt already traded but not yet settled on the appropriate settlement date.

FHFA recognizes that each Enterprise has the contractual right to issue discount notes to their respective MBS trusts in exchange for cash. Most MBS trusts receive P&I and other payments in the form of cash from the seller/servicers on or around the 18th of each month and have to pay such principal and interest to investors on the 25th of each month. The proposed rule would not include the cash inflows from such sales of discount notes to their respective MBS trusts. If an Enterprise needed to issue discount notes to an MBS trust to raise cash in an unexpected liquidity event, it could legally do so but FHFA does not expect the Enterprise to rely on such funds in the normal course of liquidity risk management.

b. Cash Window or Whole Loan Conduit Purchases

The proposed rule also requires that the Enterprises maintain a sufficient portfolio of high quality liquid assets to continue to fund the purchase of single-family loans through the Cash Window or Whole Loan Conduit (CW/WLC) during a short-term crisis of up to 60 days initially, and then 30 days for the remainder of the year. In essence, this stress assumes that the Enterprises cannot sell forward or securitize the single family mortgage loans purchased through the CW/WLC for the next 60 days during the most acute period of assumed stress, and thereafter can only sell such loans after holding them for a minimum of 30 days.

Similarly, the proposed rule would require that the Enterprises maintain a sufficient liquidity portfolio to fund the purchase of multifamily loans during a market crisis for six months. Assuming that an Enterprise can demonstrate that it historically has securitized and sold multifamily loans within six months, the proposed 365-day requirement would allow the Enterprise to assume

that it can sell multifamily loans six months after it purchases them through the multifamily cash window. For example, if an Enterprise can document that over the past 12 months, the average time it took to securitize multifamily loans into securities was six months, then FHFA would consider that adequate support. FHFA examiners would validate that there is adequate documentation to support such an assumption. FHFA notes that Fannie Mae's multifamily program uses guarantor swap transactions for the purchase of every multifamily loan and thus does not purchase multifamily loans with cash. If that Fannie Mae business practice were to change and multifamily loans were purchased for cash, then these cash outflows would need to be included in the 30-day and 365-day cash forecasts.

While the proposed rule would allow TBA contracts to count as cash inflows at the contracted settlement dates, an additional stress for the 30-day and 365-day requirements is that forecasted purchases of loans cannot be assumed to be forward sold in the TBA market, nor can they be assumed to be securitized and sold, until day 61. As a result, the proposed rule would require that the Enterprises must have a high quality liquid asset portfolio large enough to prefund the first 60 days of cash window or whole loan conduit purchases during a market crisis.

FHFA recognizes that TBA contracts are a useful risk management tool that allows the Enterprises to minimize the risk arising from purchasing loans through the cash window and whole loan conduit. The proposed rule would allow cash inflows from existing TBA contracts subject to the following limitations as follows:

1. An Enterprise will only be allowed to include expected cash inflows from existing TBA contracts in place on Day 0 as of 6 p.m. EST and an Enterprise will not be allowed to assume cash inflows arising from forecasted (as opposed to existing) TBA contracts for the 30-day and 365-day forecast periods.

2. Existing TBA contracts in excess of the amount needed to minimize the risk of existing loans purchased through the cash window or whole loan conduit or existing commitments to buy loans will not count as cash inflows. FHFA expects that Enterprises will only enter into TBA contracts that offset existing loan purchases or forward commitments to buy loans.

3. To reduce the risk that the associated cash inflow from the TBA contract is not received due to counterparty issues, the proposed rule only permits cash inflows from TBA

contracts cleared through the FICC. The proposed rule does not allow the Enterprises to include cash inflows from TBA contracts not cleared through the FICC.

4. Enterprises cannot include cash inflows from the securitization and sale of loans that have an associated TBA contract as this would double count the cash inflows.

Question 6. Should FHFA allow the Enterprises to consider additional TBA contracts as cash inflows on the settlement date or just those TBA contracts cleared through the FICC?

Question 7. Should FHFA not allow the Enterprises to consider any existing TBA contracts as cash inflows on the settlement date?

After Day 30, the proposed rule permits the Enterprises to assume they continue to fund their forecasted 365-day single-family cash window and whole loan conduit needs with a less conservative securitization and sale assumption. The proposed rule assumes that after the first 30 days, forecasted purchases of single-family loans can be securitized and sold after holding for only 30 days.

For example, the Enterprises may assume that single family loans scheduled to be purchased on:

- Day 1 can be securitized and sold on day 61;
- Day 2 can be securitized and sold on day 61;
- Day 31 can be securitized and sold on day 61;
- Day 45 can be securitized and sold on day 75; and
- Day 61 can be securitized and sold on day 91.

For delivered single-family loans owned by an Enterprise at close of business on Day 0, the proposed rule would allow that an Enterprise can include cash inflows from the sale and securitization of such single-family loans on Day 61, assuming that the Enterprise did not already assume a corresponding cash inflow from a matched TBA position on the settlement date.

For non-delivered single-family loans where the Enterprise has a commitment to buy the loan as of close of business on Day 0, the proposed rule would require that the cash outflow be assumed for the contracted settlement date, and that the cash inflow associated with a corresponding TBA contract settlement date for that commitment to sell provided that if no such TBA contract exists at the close of business on Day 0, then the earliest cash inflow is Day 61 based upon its securitization and sale.

For multifamily loans, the proposed rule would require a liquidity portfolio

large enough to fund the first three months of multifamily loan purchases through the cash window. The proposed rule assumes that the Enterprises will forecast expected multifamily loan cash purchases for the entire 365-day period.

For multifamily loans, the typical holding period prior to securitization is approximately three to four months but for some multifamily loans it is much longer. If the Enterprises can demonstrate that they can securitize and sell all of their multifamily loans within 180 days, the proposed rule would allow them to assume that multifamily loans purchased on:

- Day 1 can be securitized and sold on day 181;
- Day 31 can be securitized and sold on day 211; and
- Day 61 can be securitized and sold on day 241.

For existing multifamily loans delivered and owned by an Enterprise at the close of business on Day 0, the proposed rule would allow an Enterprise to include cash inflows from the sale and securitization of such multifamily loans on Day 91, which reflects a simplifying assumption that the weighted average time that the Enterprise held the existing multifamily loans in the cash window portfolio at the close of business on Day 0 is approximately 90 days.

Question 8. For the 365-day requirement, should the proposed rule allow for a shorter or longer time period than six-month assumption for the securitization and sale of multifamily loans? Should the proposed rule consider an alternative cash inflow process arising from the securitization and sale of multifamily loans?

c. Borrower Scheduled Principal, Interest, Tax, and Insurance Remittances

The proposed rule would require that the 30-day and 365-day requirements have an additional cash inflow stress that assumes that an increased number of borrowers fail to make scheduled principal, interest, tax, and insurance payments consistent with the specified stress scenario. These reduced cash inflows from borrowers would increase cash outflows needed to be made by the Enterprises to the MBS investors and to other entities when the servicers are not required to advance full scheduled payments to the Enterprises, including where servicers are under an “actual”⁶

⁶ The Enterprises have contracts with servicers to remit borrower principal, interest, tax, and insurance payments. Some of these contracts allow the servicers to remit only the actual principal or actual interest payments made by the borrowers. In cases where the servicer is not obligated to advance missed borrower payments, the Enterprises must

contractual remittance obligation to the Enterprises or are otherwise not required to make such advances. FHFA proposes that the Enterprises estimate these cash outflows based on the greater of the cash outflows estimated using: (1) The most recent DFAST scenario assumptions and resulting delinquencies; or (2) Such other scenario(s) prescribed by order of FHFA. Effectively this stress scenario increases the Enterprises’ cash outflows in months one through 12 and so it affects both the 30-day and the 365-day requirement.

d. Delinquent Loan Buyouts From MBS Trusts

The proposed rule would require that the Enterprises must fund delinquent single-family loan buyouts from MBS pools assuming an increase in delinquent mortgage loans under an assumed stress scenario prescribed by FHFA under its DFAST scenarios or other stress scenarios by order. The objective is to ensure that the Enterprises have a liquidity portfolio large enough to continue to fund the purchase of delinquent loans from MBS Trusts in a stress scenario. FHFA proposes that the Enterprises estimate these cash outflows based on the greater of the cash outflows estimated using: (1) The most recent DFAST scenario assumptions and resulting delinquencies; or (2) Such other stress scenario(s) prescribed by FHFA order.

For the proposed 30-day and 365-day requirements, the Enterprises must project the cash outflows arising from delinquent loan buyouts over the relevant period assuming the most recent DFAST scenario assumptions and resulting delinquencies or such other stress scenario(s) prescribed by FHFA order. In June 2020, FHFA directed the Enterprises to use the greater of DFAST scenarios or more recent forbearance history if more stressful. Provided that the Enterprises can adequately support the following assumption, the proposed rule would allow the Enterprise to forecast cash inflows based on sales of reperforming loans that were purchased from pools but only after 180 days of re-performance history which would allow them to be readily securitized into MBS assets eligible as collateral for funding transactions cleared through the FICC. For example, if an Enterprise can document that over the past 12 months, the average time it took to securitize reperforming loans into securities was six months, then FHFA would consider that adequate support. The FHFA

make the payment of principal and interest to the MBS investor.

supervisory team would validate that there is adequate documentation to support such an assumption.

e. FICC Collateral Needs

The proposed rule would require that the Enterprises estimate the cash outflow needed to prefund its expected FICC collateral requirement for the next month. The Enterprises heavily rely on the FICC to conduct their mortgage purchase operations and FICC access to clear trades on the appropriate settlement dates, as well as to support U.S. Treasury functions like the purchase of Treasury repurchase agreements through the FICC. The FICC, specifically its capped contingency liquidity facility (CCLF) requires a minimum amount of collateral be posted each month with the FICC. The CCLF collateral requirement has two components, that is, a Mortgage Backed Securities Division within the FICC component arising from the Enterprises TBA clearing activity and a Government Securities Division within the FICC component arising from the Enterprises FICC-cleared repo activity. The proposed rule would require that an Enterprise’s liquidity portfolio be large enough to accommodate a cash outflow on Day 1 of the forecast equal to the CCLF collateral requirement for the next month. The FICC provides the Enterprises with the collateral requirement each month based on the Enterprise’s use of the FICC.

The proposed rule would require that the Enterprises assume that there is a 100 percent cash outflow for the expected next month’s FICC collateral requirement on Day 1.

f. Liquidity Facility for Variable-Rate Demand Bonds

The proposed rule would require that the Enterprises assume that all contingent liabilities, and associated cashflows, related to the Enterprises’ variable-rate demand bonds (VRDBs) are treated as cash outflows on Day 1.

As part of the Enterprises’ guarantee arrangements pertaining to certain multifamily housing revenue bonds and securities backed by multifamily housing revenue bonds, in the past the Enterprises provided commitments to advance funds, commonly referred to as “liquidity guarantees.” These liquidity guarantees require the Enterprises to advance funds to third parties that enable them to repurchase tendered bonds or securities that cannot be remarketed during the weekly auction process. Given such weekly auctions, these multifamily customers are likely to need backstop funding in a short-term stress environment, such as those

experienced during the 2008 financial crisis. During that period, some VRDB auctions failed and the Enterprises had to step in and provide temporary liquidity under those guarantee arrangements.

The proposed rule would require that the Enterprise assume that there is a cash outflow equal to 100 percent of its existing liquidity facilities related to variable-rate demand bonds on Day 1.

g. Non-Bank Seller/Servicer Shortfalls

The proposed rule would require that the Enterprises must assume that their five largest non-bank single-family seller/servicers (*i.e.*, those seller/servicers that do not have funding from depositors) by UPB fail to make scheduled principal, interest, tax, and insurance payments on the next scheduled remittance date, (*i.e.*, usually by the 18th of the month). Effectively, this reduces the expected cash inflows from the top-five non-bank seller/servicers and requires that the Enterprises be able to fund such a shortfall using proceeds from the high quality liquid asset portfolio. Experience with the past financial crisis and in the recent COVID-19-related stress suggest that non-bank seller/servicers can experience acute financial stress in periods of tight liquidity, which could impose significant losses or delays on Enterprise receipt of P&I and other payments with respect to acquired mortgage loans. The proposed rule would require the Enterprises to hold sufficient high quality liquid assets to ensure that one or more failures by these counterparties would not threaten the Enterprises' ability to support housing finance markets through such periods. This assumption applies only to the first month, as the servicing for these five non-bank servicers is assumed to be resolved in the second month. The proposed rule would allow the Enterprises to assume that such principal, interest, tax, and insurance is repaid by the original seller/servicer on day 61.

Question 9. For the 365-day requirement, should the proposed rule allow for the cash inflow on Day 61 related to the repayment by these five non-bank seller/servicers? Should the proposed rule assume a longer period before repayment?

Question 10. FHFA solicits commenters' views on the seven stress scenarios discussed above, their proposed cash outflows and inflows, and the associated underlying assumptions for the proposed treatment. Are there specific cash inflow or outflow assumptions for other types of transactions that have not been

included, but should be? If so, please specify the types of transactions and the applicable inflow or outflow rates that should be applied and the reasons for doing so.

7. Unsecured Callable Debt

The proposed rule does not require the Enterprises to maintain a liquidity portfolio large enough to fund the cash outflows associated with exercising the call option on all unsecured callable debt that was in-the-money at the close of business on Day 0. Because the Enterprises have the right to call, but not the obligation to call, certain callable debt instruments, the proposed rule would allow the Enterprises to assume that the cash outflow is at maturity of the callable debt and not the next call date.

During the 2008 financial crisis, the Enterprises did not efficiently exercise their right to call debt as the debt markets were not liquid enough for them to replace that debt with similar maturity debt instruments. Similarly, in March 2020 during the COVID-19-related financial market stress, the Enterprises did not exercise their right to call debt efficiently because they could not reissue similar longer-term debt. Subsequently, after the March 2020 COVID-19 stress period, both Enterprises were able to exercise calls on the next available date and replace that called debt with similar callable debt or fixed rate debt at favorable terms.

Question 11. FHFA solicits commenters' views on the proposed treatment for Enterprise callable debt. Specifically, what are commenters' views on the proposed provisions that would allow the Enterprises to not call their unsecured callable debt even if it was in-the-money at the close of business on Day 0?

8. Changes in Financial Condition

Certain contractual clauses in derivatives and other transaction documents, such as material adverse change clauses and downgrade triggers, are aimed at capturing changes in the Enterprises financial condition and, if triggered, would require an Enterprise to post more collateral or accelerate demand features in certain obligations that require collateral.

The proposed rule would not require an Enterprise to count as an outflow any additional amounts that the Enterprise would need to post or fund as additional collateral under a contract as a result of a change in its financial condition. If the proposed rule did require such an assumption, an Enterprise could calculate this outflow

amount by evaluating the terms of such contracts and calculating any incremental additional collateral that would need to be posted as a result of the triggering of clauses tied to a ratings downgrade or similar event, or change in the Enterprise's financial condition.

Question 12. Should the proposed rule require that the Enterprises hold high quality liquid assets to cover potential increases in collateral needed assuming a significant change in their financial condition?

B. Long-Term Liquidity and Funding Requirements

1. Background

The 2008 financial crisis exposed the vulnerability of the Enterprises to liquidity shocks. For example, before the crisis, the Enterprises and many banking organizations lacked robust liquidity risk management metrics and relied excessively on short-term wholesale funding to support less-liquid assets. In addition, the Enterprises and many banks did not sufficiently plan for longer-term liquidity risks, and the risk management and control functions of the Enterprises failed to challenge such decisions or sufficiently plan for possible disruptions to the Enterprises regular sources of funding. Instead, the risk management and control functions reacted only after demand for longer term agency unsecured debt evaporated.

During the crisis, the Enterprises and many banking organizations experienced severe contractions in the supply of funding. As access to longer-term funding became limited, many in the financial markets were forced to sell and as a result certain asset prices, including for private label securities (PLS), fell significantly. When prices fell, the Enterprises and many banking organizations faced the possibility of significant capital losses and failure. The threat this presented to the U.S. financial system caused the U.S.

government to provide significant levels of support to the Enterprises and many U.S. banks to maintain global financial stability. This experience demonstrated a need to address these shortcomings at the Enterprises and banking organizations and to implement a more rigorous approach to identifying, measuring, monitoring, and limiting reliance on short-term sources of funding that results in additional debt rollover risk.

Since the 2008 financial crisis, FHFA (as noted above) has developed qualitative standards focused on strengthening the Enterprises' overall risk management, liquidity positions, and liquidity and funding risk

management. By improving the Enterprises' ability to absorb shocks arising from financial and economic stress, these measures, in turn, promote a more resilient mortgage funding market and U.S. financial system.

FHFA has supervisory guidance to address the risks arising from excessive reliance on short-term funding, such as short-term discount notes, that increases rollover risk both before and after the 2008 financial crisis. In 2009, for example, FHFA issued a supervisory letter that required, among other things, that the Enterprises develop capabilities to measure cash inflows and outflows daily for one year.

As previously discussed, AB 2018–06 incorporates liquidity risk management elements consistent with Basel Liquidity Principles. Under the AB, FHFA expects an Enterprise's measurement of liquidity to include metrics for intraday liquidity, short-term cash needs (e.g., 30 days), access to collateral to manage cash needs over the medium term (e.g., 365 days), and a general congruence between the maturity profiles of the assets and liabilities. FHFA also encouraged the Enterprise to consider common industry practices and regulatory standards.

The proposed long-term liquidity and funding requirements would complement the proposed short-term 30-day and intermediate-term 365-day requirements. For example, these two long-term liquidity and funding requirements complement the 30-day requirement's goal of improving resilience to short-term economic and financial stress by focusing on the stability of an Enterprise's structural funding profile over a longer, one-year time horizon. In a financial crisis, financial institutions like the Enterprises during the crisis that lack longer-term stable funding sources may be forced by creditors to monetize assets at the same time, driving down asset prices, like those price declines in the PLS market and commercial mortgage backed securities market in the 2008 financial crisis. The proposed rule would mitigate such risks by directly increasing the funding resilience of the Enterprises, thereby indirectly increasing the overall resilience of the U.S. financial system.

The proposed two longer-term requirements would also provide a standardized means for measuring the stability of an Enterprise's funding structure, promote greater comparability of funding structures across the Enterprises, improve transparency, and increase market discipline through the proposed rule's monthly public disclosure requirements.

Given the lack of retail and wholesale deposits and the relative simplicity of the Enterprises' funding structure, FHFA proposes a simplified approach for its first long-term liquidity and funding requirement, which compares the amount of an Enterprise's long-term unsecured debt (*i.e.*, longer than one year to maturity) to the amount of its less-liquid assets in the retained portfolio. Under the proposed rule, the minimum ratio for this metric is 120 percent. While proposing a simpler approach than the U.S. banking regulators, the proposed rule makes conservative assumptions about what constitutes a less-liquid asset that requires longer term funding, like collateralized mortgage obligations (CMOs) noted below.

Because the Enterprises lack access to the discount windows of any of the twelve Reserve Banks in the Federal Reserve System, FHFA proposes that only assets that are eligible to be posted as collateral through the FICC can be counted as liquid assets and all other assets, even some agency securities like agency CMOs, would be considered less-liquid and require long-term funding.

To address the funding of other long-term assets, FHFA also proposes to include a second long-term liquidity and funding requirement based on the ratio of the spread duration of the Enterprise's unsecured agency debt divided by the spread duration of its retained portfolio assets. The proposed rule would require that an Enterprise's spread duration ratio exceed 60 percent. This proposed long-term requirement will cause the Enterprises to maintain an appropriate amount of long-term unsecured debt and reduce rollover risk. As a result of this requirement, the Enterprises will have incentive to better match the repricing risk of their debt with the repricing of their assets. It will also minimize the risk that an Enterprise would be forced to sell significant amounts of long-term asset into distressed markets.

2. Long-Term Liquidity and Funding Requirements

The proposed rule would require the Enterprises to meet two long-term liquidity and funding requirements for the purpose of: (i) Reducing Enterprise debt maturity rollover risk; (ii) Ensuring that the Enterprises have sufficient long-term unsecured debt so they do not have to sell less-liquid assets into potentially stressed markets for at least one year; (iii) Incenting the Enterprises to issue an appropriate amount of long-term unsecured debt; and (iv) Incenting the Enterprises to reduce the amount of

less-liquid assets held in the retained portfolio that are not eligible collateral for inclusion in the 365-day liquidity requirement. These two long-term liquidity and funding requirements complement each other. The first ensures that less-liquid assets are funded with long-term unsecured debt. The second ensures that the rollover and repricing of the unsecured debt is tied to the repricing of all the retained portfolio assets, not simply the less-liquid assets.

a. Long-Term Unsecured Debt to Less-Liquid Asset Ratio

The proposed rule would include a long-term liquidity and funding requirement that the Enterprises manage their issuance of long-term unsecured debt and their holdings of less-liquid securities to ensure that the ratio of the Enterprises' long-term unsecured debt to its less-liquid assets is greater than 1.2, or 120 percent.

Under the proposed rule, the numerator is the three-month moving average of the UPB of all outstanding Enterprise unsecured debt with one year or longer to maturity. The maturity of the unsecured debt is based on the final maturity of unsecured debt and not the call date. The denominator is the three-month moving average of all assets held in the retained portfolio that are not eligible collateral to be pledged to the FICC. For example, CMOs held by the Enterprises are not eligible to be pledged to the FICC and would be included in calculating the denominator.

The proposed rule would allow the Enterprises to exclude certain relatively liquid loans from the denominator. For example, the proposed rule assumes that cash window loans or whole loan conduit loans, and reperforming loans that have no delinquencies in prior six months, can be readily converted into FICC-eligible collateral. Therefore, these loans would not be included in the denominator. In addition, certain multifamily pass-through securities held by the Enterprises are eligible to be pledged to the FICC but other multifamily structured securities arising from the K-deals are not eligible to be pledged to the FICC and would be included in the denominator.

Question 13. Should FHFA broaden the definition of "liquid assets" to include certain non-FICC eligible assets, such as multifamily agency securities arising from K-deal transactions? If so, what criteria should FHFA use?

b. Spread Duration of Unsecured Debt To Spread Duration of Assets Requirement

The proposed rule would include a second long-term requirement that measures the ratio of the spread duration of an Enterprise's unsecured debt to the spread duration of its retained portfolio assets. FHFA recognizes that effective duration is often defined as the percentage change in the price of financial instruments with embedded options from a 100-basis point change in interest rates. Financial instruments with positive duration increase in value as interest rates decline. Conversely, financial instruments with negative duration increase in value as interest rates rise. FHFA also recognizes that spread duration is often defined as the percentage change in the price of financial instruments from a change in spread over the benchmark interest rates. Unlike "effective" duration, spread duration is typically calculated by discounting of an instrument's cashflows, and not by the affecting a change of the underlying cashflows themselves due to optionality. This discounting impact creates a measure that is typically positive, where the instrument increases in value as spreads decline and decrease in value as spreads widen.

Under the proposed rule, the numerator of the ratio is the three-month moving average of the daily spread duration of all Enterprise unsecured debt. The denominator of the ratio is the three-month moving average of the daily spread duration of all Enterprise retained portfolio assets. The proposed rule would require that this ratio exceed 0.6 or 60 percent.

The numerator is the three-month moving average of the daily spread duration of all Enterprise unsecured debt. The daily spread duration of all Enterprise unsecured debt on a particular day equals the weighted average of the individual spread duration for each unsecured debt instrument weighted by the product of the UPB and the market price for the unsecured debt instrument for that day. Determining the spread duration for all unsecured debt requires that an appropriate estimate be made for each unsecured debt instrument. In addition, using a three-month moving average for the weighted balance sheet spread durations reduces potential impact of daily fluctuations on compliance management. The three-month moving average of the daily spread duration of all Enterprise unsecured debt is equal to the sum of the daily spread duration for

all Enterprise unsecured debt for each business day over the three-month period preceding the calculation date divided by the total number of business days during the three-month period.

The denominator is the three-month moving average of the daily spread duration of all Enterprise retained portfolio assets. The daily spread duration of all Enterprise assets on a particular day equals the weighted average of the individual spread duration for each asset weighted by the product of the UPB and the market price for the retained portfolio asset for that day. The three-month moving average of the daily spread duration of all Enterprise retained portfolio assets is equal to the sum of the daily spread duration for all Enterprise assets for each business day over the three-month period preceding the calculation date divided by the total number of business days during the three-month period.

The proposed rule would provide additional assumptions that the Enterprises are to use in the calculation of this long-term liquidity and funding requirement. The proposed rule would allow the Enterprises to make the following adjustments to the spread duration of specific retained portfolio assets and unsecured debt:

- For callable unsecured debt, the proposed rule would allow the Enterprises to use the maturity of the callable debt rather than the actual spread duration of the callable debt because the Enterprise does not have the obligation to call the debt early and can, in a liquidity event, decide not to call the bond.

- For certain single-family and multifamily loans in the securitization pipeline, the proposed rule would allow the spread duration to be adjusted to better reflect the expected holding period of the loans before securitization and sale of these loans. For example, provided that the actual experience of the Enterprise can support these pipeline securitization assumptions, the proposed rule would allow a single-family loan in the securitization process to be assigned a two-month spread duration, and a multifamily loan in the securitization pipeline to be assigned a six-month spread duration. FHFA supervision teams will evaluate the underlying support for key assumptions, like this spread duration assumption, as part of ongoing supervisory activities.

- For certain trust structures, like those that are consolidated for GAAP purposes or credit risk transfer related trusts, the proposed rule would allow certain trust related assets to be excluded, as the trust structures are not funded by unsecured corporate debt but

rather by debt issued by the trust and backed by the assets in the trust. In essence, the debt issued by MBS trusts and the loans in the MBS trusts that secure the debt are closely matched and the Enterprise does not have funding risk and thus these assets and liabilities are not included in this spread duration requirement. Similarly, certain credit risk transfer trusts, created by Fannie Mae (Connecticut Avenue Securities Credit-Linked Notes) and Freddie Mac (Structured Agency Credit Risk Credit-Linked Notes) are not included in this spread duration requirement. For the original credit risk transfers that did not include a credit-linked note structure, the Enterprises are required to include those as they represent unsecured debt issued by the corporation.

- The proposed rule would allow the Enterprises to exclude high quality liquid assets held in the liquidity portfolio from the denominator of the calculation because these assets are deemed to be liquid securities that do not require term funding and can be readily liquidated into cash. Similarly, the collateral used to post as initial margin is excluded from the spread duration asset calculation for this requirement.

Question 14. FHFA requests comment on whether the spread duration requirement appropriately addresses the concerns noted above, or whether there are alternative approaches to do so? Does the value of including the spread duration requirement exceed the costs and complexity of the calculation?

c. Funding From Stockholders Equity

Under the two longer-term proposed requirements, the Enterprises would be required to identify the maturity of unsecured debt instruments based on their contractual maturity. Other balance sheet sources of funds, like stockholder's equity, typically do not have a contractual maturity. In the case of stockholder's equity, the proposed rule treats these funding sources as short-term funding substitutes and does not attribute any maturity to these sources of funds beyond one year.

Question 15. FHFA requests comment on whether some portion of stockholder's equity should be considered as a longer-term funding source for the long-term liquidity and funding requirements? If so, why? If so, what analytics would support this assumption?

C. Temporary Reduction of Liquidity Requirements

FHFA recognizes that during periods of economic dislocation or market stress, it may be necessary for an

Enterprise, consistent with safety and soundness, to expend its liquidity position in order to support market liquidity to the secondary mortgage market. Such support may be necessary during periods of market stress to further an Enterprise's statutory public purposes, and may require, for example, that an Enterprise be provided flexibility to meet a reduced 30-day liquidity minimum in order to fund severe stress liquidity needs and to continue to provide liquidity to the secondary mortgage markets.

Therefore, the proposed rule would provide for temporary reductions in minimum liquidity requirements to address economic, market, or other circumstances. Specifically, it would provide for FHFA consideration and determination that, due to economic or market conditions, temporary adjustments to reduce the minimum liquidity requirements are needed to address those conditions. FHFA's exercise of this authority is intended to further Enterprise public purposes in supporting secondary mortgage market liquidity during periods of severe economic or market stress.

Question 16. FHFA seeks comment on all aspects of the proposed process for FHFA temporarily to reduce minimum regulatory liquidity requirements to respond appropriately during periods of economic or market stress.

III. Liquidity Risk Management Reporting

The proposed rule would require each Enterprise to report daily to FHFA its compliance with the minimum liquidity requirements. The Enterprises shall submit such reports at the close of each business day, which is treated as Day 0, reflecting the liquidity positions and other required information as of 6 p.m. EST on Day 0. Such reports shall include, at a minimum, the key stress scenario assumptions discussed in the preamble, including a summary of the respective cash flows and other significant information and any other key assumptions used to calculate the four liquidity requirements. In some cases, this may require supplemental reports to explain individual key stress cash flows, like the purchases of delinquent loans and the purchases of cash window and whole loan conduit loans. These supplemental reports could also include, but are not limited to, the composition of both the FICC-eligible and non-FICC eligible collateral and the components of the spread duration calculations.

The proposed rule would provide enhanced information about the short-term, intermediate-term and long-term

liquidity and funding profile of the Enterprises to managers, board directors, and supervisors. With this information, the Enterprise's management and supervisors would be better able to assess the Enterprise's ability to meet its projected liquidity needs during periods of liquidity stress, take appropriate actions to address liquidity needs, and, in situations of failure, to implement an orderly resolution of the Enterprise.

The proposed rule's 30-day and 365-day liquidity requirements would use Enterprise cash flow projections and certain assumptions based on stressed market conditions. While the short-term and intermediate-term liquidity requirements would use specific assumptions specified by FHFA (including by order) for liquidity requirement calculation purposes, FHFA expects the Enterprises would maintain robust stress testing frameworks that incorporate additional scenarios, like lower rate environments that might trigger calling debt. Enterprises should use these additional scenarios in conjunction with the proposed rule's liquidity requirements to appropriately determine their board and management liquidity buffers. FHFA notes that the four liquidity requirements are minimum requirements and organizations, like the Enterprises, that pose more systemic risk to the U.S. financial system or whose liquidity stress testing indicates a need for higher liquidity buffers may need to take additional steps beyond meeting the minimum ratio in order to meet supervisory expectations.

The proposed rule contemplates alignment between the Enterprises for the daily reporting of the liquidity and funding requirements and may, by order, require a common template that demonstrates the sources and uses of cash and the increased cash outflows or reduced cash inflows resulting from the seven stress scenarios. The objective is to ensure that management and supervisors have a transparent and readily comparable view into the key assumptions and resulting cash flows or metrics.

The proposed rule would require each Enterprise to report to the public its compliance with the four liquidity requirements monthly. Each Enterprise currently publishes a monthly volume summary that includes important information that the public consumes. The proposed rule would require the Enterprises to amend their respective monthly volume summaries and provide the average and month-end metrics for each of the four liquidity and funding requirements. In addition to the

liquidity metrics, the Enterprises should include key assumptions used to estimate these liquidity metrics. FHFA may, by order, decide to include additional reporting requirements.

Question 17. FHFA invites public comment on all aspects of the proposed process and minimum elements for regulatory, management, and public reporting.

IV. Supervisory Framework

A. Liquidity Requirement Shortfall

Under the proposed rule, an Enterprise would be required to notify FHFA on any business day that any of the four liquidity requirements is not met. Specifically, if an Enterprise's liquidity position is calculated to be less than any of the minimum liquidity requirements, the Enterprise must promptly submit to FHFA for approval a plan for achieving compliance, unless FHFA instructs otherwise. In addition, if FHFA determines that the Enterprise is otherwise non-compliant with the requirements of this part, FHFA may require the Enterprise to submit to FHFA for approval a plan to remediate the shortfall. The Enterprise plan must include, as applicable: (1) An assessment of the Enterprise's liquidity profile and the reasons for the shortfall; and (2) The actions that the Enterprise has taken and will take to achieve full compliance with this part, including: (i) A plan for adjusting the Enterprise's risk profile, risk management, and funding sources in order to achieve full compliance with this part; (ii) A plan for remediating any operational or management issues that contributed to noncompliance with this part; (iii) Best estimate time frame for achieving full compliance with this part; and (iv) A commitment to report to FHFA daily on Enterprise progress to achieve compliance in accordance with the plan until full compliance with this part is achieved. Finally, the Enterprise plan must include other considerations or actions as may be required for FHFA approval.

FHFA engagement with the Enterprise on a remediation plan does not preclude exercise of other supervisory or enforcement authorities. FHFA may, at its sole discretion, take additional supervisory or enforcement actions to address non-compliance with the requirements of this part, including non-compliance with the minimum liquidity requirements or non-compliance with any requirement to submit a liquidity plan acceptable to FHFA. The liquidity remediation plan is intended to enable FHFA to monitor and respond appropriately to the unique

circumstances giving rise to an Enterprise's liquidity shortfall.

Question 18. FHFA invites public comment on all aspects of FHFA's proposed process to respond appropriately to Enterprise shortfalls in required liquidity.

B. Process for Supervisory Determination of Temporarily Increased Liquidity Requirements

The Board of Directors and senior management of the Enterprises have duties under applicable law to oversee, monitor, and manage Enterprise liquidity risk prudently. FHFA recognizes that under certain circumstances, it may be necessary for an Enterprise to enhance its liquidity position commensurate with its business activities. Under the proposed rule, when FHFA determines that, due to economic, market, or Enterprise-specific circumstances, temporary modified Enterprise liquidity requirements above those established under this part are necessary or appropriate for an Enterprise, FHFA will notify the Enterprise in writing of the proposed modified Enterprise liquidity requirements, the timeframe by which the Enterprise is required to achieve and comply with the proposed requirements, and an explanation of why the proposed modified Enterprise liquidity requirements are considered necessary or appropriate for the Enterprise.

The Enterprise may respond in writing within 30 days, or such time as FHFA may require, to any or all of the matters addressed in the notice, including any information which the Enterprise would like FHFA to consider in determining whether to establish the proposed modified liquidity requirements for the Enterprise. Failure to respond shall constitute a waiver of any objections to the proposed modified liquidity requirements or the timeframes for compliance.

After the close of the Enterprise response time period, FHFA will determine whether to establish the temporarily increased requirements for the Enterprise. FHFA will notify the Enterprise of its written determination and order effectuating the modified requirements. As part of its determination, FHFA may require the Enterprise to develop and submit a plan acceptable to FHFA to reach the modified liquidity requirements.

These procedures are intended to enable FHFA to monitor and respond appropriately to the particular economic, market, or Enterprise-specific circumstances by adjusting the

minimum liquidity requirements through a temporary increase.

Question 19. FHFA invites public comment on all aspects of FHFA's proposed procedures to respond appropriately and in a timely manner to economic, market, Enterprise-specific, or other circumstances affecting Enterprise liquidity, safety and soundness, and ability to meet their public purposes.

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). The proposed rule contains no such collection of information requiring OMB approval under the PRA. Therefore, no proposed collection of information has been submitted to OMB for review.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities because the proposed rule is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

The Proposed Rule

List of Subjects in 12 CFR part 1241

Administrative practice and procedure, Government-sponsored enterprises, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4526, FHFA proposes to amend Chapter XII of Title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—Federal Housing Finance Agency

Subchapter C—Enterprises

■ 1. Add part 1241 to subchapter C to read as follows:

PART 1241—MINIMUM ENTERPRISE LIQUIDITY REQUIREMENTS

Subpart A—General Provisions

Sec.

- 1241.1 Purpose and applicability.
- 1241.2 Supervisory and enforcement authority.
- 1241.3 Definitions.

Subpart B—Required Minimum Enterprise Liquidity

- 1241.10 Enterprise liquidity calculation and operational requirements.
- 1241.11 Minimum Enterprise liquidity requirements.
- 1241.12 Temporary reduction of liquidity requirements.

Subpart C—Reporting Requirements

- 1241.20 Required liquidity reporting.
- 1241.21 Reporting orders.

Subpart D—Supervisory Framework for Remediating Minimum Liquidity

- 1241.30 Remediation of minimum liquidity shortfall.
- 1241.31 Supervisory determination of temporarily increased liquidity requirements.

Subpart E—[Reserved]

Authority: 12 U.S.C. 4511(b); 12 U.S.C. 4513(a); 12 U.S.C. 4513b; 12 U.S.C. 4514; 12 U.S.C. 4526; 12 U.S.C. 4631–4636.

Subpart A—General Provisions

§ 1241.1 Purpose and applicability.

(a) *Purpose.* FHFA is responsible for supervising and ensuring the safety and soundness of the regulated entities. In furtherance of those responsibilities, this part sets forth minimum liquidity and related requirements that apply to each Enterprise. (b) *Applicability.* The requirements established by this part apply to the Enterprises, and do not apply to the Federal Home Loan Banks or the Office of Finance.

§ 1241.2 Supervisory and enforcement authority.

(a) *Exercise of authority.* If FHFA determines that the Enterprise's liquidity requirements as calculated under this part are not commensurate with its liquidity risks, FHFA may, consistent with § 1241.31, require an Enterprise temporarily to hold an amount of High Quality Liquid Assets or other liquidity assets in an amount greater than otherwise required under this part, or to take any other measure to improve an Enterprise's liquidity risk profile.

(b) *No safe harbor.* The liquidity requirements established under this part are minimum requirements. Compliance with this part does not preclude agency action to enforce any other provision of law or regulation, including 12 CFR parts 1236 and 1239.

(c) *FHFA supervisory and enforcement authority not affected.* Nothing in this part shall be construed to limit the authority of FHFA under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity coverage levels, or violations of law. (d) *Prudential standard.* This part is a prudential standard under 12 U.S.C. 4513b(a)(5) and 12 CFR part 1236.

§ 1241.3 Definitions.

For purposes of this part:

Calculation date means the business day as of which an Enterprise calculates its liquidity position and compliance with each of the minimum liquidity requirements established under this part.

Cumulative Daily Net Cash Outflows (CDNCO) means, with respect to any day within a calendar period (*i.e.*, 30-day or 365-day period) for which the CDNCO is calculated, the cumulative sum of an Enterprise's Daily Net Cash Flows starting from the first day following the Calculation Date up to and including the day in the calendar period for which the CDNCO is calculated.

Daily Excess Requirement means an amount equal to \$10 billion.

Daily Net Cash Flows (DNCF) means, for any day within a calendar period (*i.e.*, 30-day or 365-day period) for which the DNCF is calculated, the Total Cash Outflows minus the Total Cash Inflows for that day. A positive DNCF represents a net cash outflow for the day, while a negative DNCF represents a net cash inflow for the day.

Day or daily means calendar day, and daily means pertaining to a calendar day, unless otherwise specified.

Elected Calculation Time means the time on the Calculation Date as of which an Enterprise must calculate its liquidity position for purposes of determining compliance with each of the minimum liquidity requirements established under this part. The Elected Calculation Time is 6 p.m. Eastern Standard Time (EST), unless the Enterprise elects a different Elected Calculation Time approved in writing by FHFA. The Enterprise may not change its Elected Calculation Time without prior written approval by FHFA.

High Quality Liquid Assets means, regardless of "trading", "available for sale", or "held-to-maturity" accounting designations, the following unencumbered assets that are owned and held by the Enterprise free of legal, regulatory, contractual, or other restrictions on the ability of the Enterprise to monetize the asset for cash, and that have not been pledged, explicitly or implicitly, to secure or provide credit enhancement for any transaction:

- (1) Cash deposits held in a Federal Reserve Bank account;
- (2) U.S. Treasury securities;
- (3) Short-term secured loans to the Federal Reserve Bank of New York secured by U.S. Treasury securities; short-term secured loans held by the Enterprise secured by U.S. Treasury securities that clear through the Fixed Income Clearing Corporation (FICC). For short-term secured loans to the Federal Reserve Bank of New York or those cleared through the FICC, the remaining maturity term of the asset must not be longer than the greater of:
 - (i) 15 days; or
 - (ii) The number of days until the next agency mortgage-backed securities (MBS) payment date;
- (4) Up to an amount not to exceed \$10 billion, and subject to sufficient counterparty credit risk limits on deposits with any single institution and affiliated institutions, unsecured overnight bank deposits with a federally chartered bank where the bank and any holding company controlling the bank are headquartered in the United States, and where the bank is subject to quarterly reporting under the Federal Reserve System's FR Y-15 reporting requirements (or any amended or successor report) and has at least \$250 billion in assets as of the most recent reporting date.

Highest Cumulative Daily Net Cash Outflows (HCDNCO) means, with respect to a calendar period (*i.e.*, 30-day or 365-day period), the greater of zero or the maximum Cumulative Daily Net Cash Outflows amount occurring within the calendar period.

Minimum Stress Assumptions has the meaning set forth in § 1241.10(d).

Spread Duration of Unsecured Debt has the meaning set forth in § 1241.11(c)(2)(ii)(A).

Spread Duration of Retained Portfolio Assets has the meaning set forth in § 1241.11(c)(2)(ii)(B).

Total Cash Inflows means, for any day for which Total Cash Inflows is calculated, all cash inflows into the Enterprise. Total Cash Inflows includes cash inflows from To-be-Announced (TBA) contracts held by the Enterprise

on or before the Calculation Date, which are assumed to be valid and represent cash inflows on the contract settlement date. With respect to any MBS trust-related cash flows, an Enterprise must include the total cash inflows to the Enterprise from its MBS trusts. Total Cash Inflows must be determined using the Minimum Stress Assumptions. For example, total Cash Inflows do not include any expected cash inflows from new debt issuance, unless the unsecured debt issuance has traded but not yet settled as of the Calculation Date. For cash inflows expected from mortgage sales or securitizations, calculations of Total Cash Inflows are limited consistent with the Minimum Stress Assumptions.

Total Cash Outflows means, for any day for which Total Cash Outflows is calculated, all cash outflows from the Enterprise. Total Cash Outflows includes, but is not limited to, cash outflows related to funding new mortgage purchases through the Enterprise facilities for purchasing mortgages in exchange for cash, *i.e.*, the Freddie Mac cash window or the Fannie Mae whole loan conduit. With respect to any MBS trust-related cash flows, an Enterprise must include the total cash outflows from the Enterprise to its MBS trusts. Total Cash Outflows must be determined using the Minimum Stress Assumptions. MBS trust-related cash outflows include advances paid by the Enterprise on principal and interest to MBS trusts and investors and delinquent loan buyouts.

Total Less-liquid Retained Portfolio Assets has the meaning set forth in § 1241.11(c)(1)(ii).

Total Long-term Unsecured Debt has the meaning set forth in § 1241.11(c)(1)(i).

Subpart B—Required Minimum Enterprise Liquidity

§ 1241.10 Enterprise liquidity calculation and operational requirements.

(a) *Calculation date for minimum liquidity requirement.* An Enterprise must, on each business day, calculate its liquidity position and compliance with the minimum liquidity requirements established under § 1241.11(a) and (b) for a 30-day period and a 365-day period, and under § 1241.11(c) for the long-term liquidity requirements.

(b) *Elected Calculation Time.* The Enterprise must calculate its liquidity position and compliance with the minimum liquidity requirements established under § 1241.11(a) and (b) for a 30-day period and a 365-day period, and under § 1241.11(c) for the long-term liquidity requirements, as of

the Elected Calculation Time on each Calculation Date. Unless the Enterprise elects a different Elected Calculation Time by written notice approved by FHFA, the Elected Calculation Time will be 6 p.m. EST. The Enterprise may not change its Elected Calculation Time without prior written approval by FHFA.

(c) *Operational requirements for High Quality Liquid Assets.* An Enterprise must meet the following requirements for assets held as High Quality Liquid Assets for purposes of meeting the minimum liquidity requirements:

(1) Implement and maintain appropriate procedures and systems to monetize the High Quality Liquid Assets at any time in accordance with applicable standard settlement procedures;

(2) Conduct periodic testing of the effectiveness and ability of Enterprise procedures and systems to monetize a sample of High Quality Liquid Assets held;

(3) Implement and maintain policies requiring all High Quality Liquid Assets to be controlled by the Enterprise management function responsible for managing Enterprise liquidity risk, including a requirement that the High Quality Liquid Assets be segregated from other Enterprise assets for the sole purpose of providing liquidity to the Enterprise in times of market stress; and

(4) Implement and maintain policies and procedures that, on a daily basis:

(i) Identify where the High Quality Liquid Asset is held by legal entity, geographic location, currency, custodial or bank account, and other relevant identifying factors; and

(ii) Determine that the assets held as High Quality Liquid Assets continue to qualify as High Quality Liquid Assets.

(d) *Minimum Stress Assumptions.* An Enterprise must use the Minimum Stress Assumptions in determining its Total Cash Inflows and Total Cash Outflows to calculate its liquidity position and compliance with the minimum liquidity requirements established under § 1241.11(a) and (b) for a 30-day period and a 365-day period, and under § 1241.11(c) for the long-term liquidity requirements.

Minimum Stress Assumptions means the following stress scenarios:

(1) *Complete loss of enterprise ability to issue unsecured debt.* In determining its cash inflows and outflows, the Enterprise must assume it is unable to issue any unsecured debt or receive cash from any unsecured debt issuance for the 365 days following the Calculation Date, except for unsecured debt traded but not yet settled as of the Calculation Date.

(2) *Continued mortgage purchases from enterprise cash window and whole loan conduit, with limited ability to sell or securitize mortgages—(i) Single-family.* In determining its cash inflows and outflows from its single-family mortgage operations, the Enterprise must:

(A) Assume it must continue to fund all forecasted single-family mortgage purchases based on Enterprise models for 30 days and 365 days, respectively, following the Calculation Date.

(B) Assume that, except for mortgages to be delivered under TBA contracts that are cleared through FICC and held by the Enterprise as of the Elected Calculation Time on the Calculation Date, it is unable to sell or securitize any mortgages until the later of 60 days following the Calculation Date or 30 days following acquisition of the mortgage.

(C) Not include in its cash inflow calculations mortgage sales on existing TBA contracts in excess, as of any Calculation Date, of existing Enterprise mortgage purchases and commitments to purchase mortgages.

(D) Not double-count its cash inflows for the sale or securitization of a mortgage and from cash inflows arising from an existing TBA contract on that mortgage. For example, an Enterprise may include a cash inflow from the sale of a mortgage, but if so, it may not also incorporate a cash inflow from a TBA contract associated with the same mortgage.

(ii) *Multifamily.* In determining its cash inflows and outflows from its multifamily mortgage operations, the Enterprise must:

(A) Assume it must continue to fund all forecasted multifamily mortgage purchases over 30 days and 365 days, respectively, following the Calculation Date.

(B) For any multifamily mortgage that an Enterprise acquires and receives delivery of on or before the Calculation Date, assume it sells or securitizes such mortgage, and receives corresponding cash inflow, starting on day 91 following the Calculation Date, provided that the Enterprise held such a loan for a total of 180 days.

(C) For any multifamily mortgage that an Enterprise acquires and receives delivery of after the Calculation Date, assume it is unable to sell or securitize such mortgage until at least 180 days following acquisition and delivery. An Enterprise may assume, to the extent it sufficiently documents the factual basis for the assumption, that it is able to sell or securitize a multifamily mortgage after a certain number of days following acquisition of the mortgage, provided

that the assumed number of days is not less than 180 days.

(3) *Increase in borrower delinquencies under stress conditions.* In determining its cash inflows, the Enterprise must assume the number of borrowers failing to make scheduled principal, interest, tax, and insurance payments under their mortgages increases consistent with a stress scenario. The Enterprise must assume that the Enterprise is required to advance principal, interest, tax, and insurance payments as required under its MBS trust agreements, and consistent with its servicing agreements. To determine the stress increase in borrowers, the Enterprise must use either the following assumed stress scenarios, whichever results in the greater stress estimate of borrowers failing to make scheduled mortgage payments:

(i) The most recent Dodd-Frank Act Stress Test (DFAST) severe stress scenario assumptions provided to the Enterprise by FHFA; or

(ii) Other stress scenarios as FHFA may prescribe by order.

(4) *Increase in delinquent loan buyouts from enterprise-guaranteed MBS under stress conditions.* (i) In determining its cash outflows, the Enterprise must determine stress volumes of delinquent loan buyouts from its guaranteed MBS for 30 days following the Calculation Date, and for 365 days following the Calculation Date. To make such determination, the Enterprise must use either of the following assumed stress scenarios, whichever results in the greater stress estimate of delinquent mortgage buyouts:

(A) The most recent DFAST severe stress scenario assumptions provided to the Enterprise by FHFA, or

(B) Other stress scenarios as FHFA may prescribe by order.

(ii) An Enterprise may assume, to the extent that it sufficiently documents the evidentiary basis for the assumption, that it could sell delinquent mortgages forecasted to be repurchased from pools beginning a certain number of days from the forecasted repurchase date, provided that the assumed number of days is not less than 180 days.

(5) *Immediate need to meet collateral requirements to maintain access to short-term lending market.* In determining its cash outflows, the Enterprise must assume a cash outflow, on the first day following the Calculation Date (*i.e.*, Day 1), in the amount of initial collateral that the FICC requires the Enterprise to post in order to access the FICC facility for the calendar month following the Calculation Date. If the FICC has not yet

informed the Enterprise of the required amount of initial collateral for the following month, the Enterprise must use its best estimate of the required FICC initial collateral.

(6) *Immediate need to advance funds under variable-rate demand bond liquidity facilities.* In determining its cash outflows, the Enterprise must assume that all contingent liabilities and associated cash flows related to all variable-rate demand bonds whose liquidity is guaranteed by the Enterprise are immediately exercised and due, with the required cash outflows occurring the first day following the Calculation Date (*i.e.*, Day 1). (7)

Increase in remittance shortfall by top non-bank seller-servicers under stress conditions. In determining its cash inflows, the Enterprise must assume for the first month only that its top-five largest non-bank servicers by unpaid principal balance (UPB) fail, for all loans serviced for the Enterprise by these servicers, to remit by the applicable remittance due dates scheduled principal, interest, tax, and insurance payments. The Enterprise must assume cash outflows during the first month to cover principal and interest payments to holders of its MBS, and to pay taxes and insurance on the affected mortgages. For purposes of determining Total Cash Inflows, the Enterprise may assume a cash inflow on day 61 following the Calculation Date representing repayment to the Enterprises of the advances made in respect of the amounts assumed not to have been timely remitted.

§ 1241.11 Minimum Enterprise liquidity requirements.

(a) *Minimum required liquidity to cover 30-day period.* (1) An Enterprise must, for each Calculation Date at the Elected Calculation Time, calculate and determine its Cumulative Daily Net Cash Outflows for each day of the 30-day period beginning the day following the Calculation Date, the amount of the Highest Cumulative Daily Net Cash Outflows for the 30-day period, and the day on which the Highest Cumulative Daily Net Cash Outflows occurs for the 30-day period.

(2) As of each Calculation Date, an Enterprise must maintain High Quality Liquid Assets equal to or greater than the sum of:

(i) The Enterprise's Highest Cumulative Daily Net Cash Outflows calculated to occur over the 30-day period beginning the day following the Calculation Date, and;

(ii) The Daily Excess Requirement.

(b) *Minimum required liquidity to cover 365-day period.* (1) An Enterprise

must, for each Calculation Date at the Elected Calculation Time, calculate and determine its Cumulative Daily Net Cash Outflows for each day of the 365-day period beginning the day following the Calculation Date, the amount of the Highest Cumulative Daily Net Cash Outflows for the 365-day period, and the day on which the Highest Cumulative Daily Net Cash Outflows occurs for the 365-day period.

(2) As of each Calculation Date, an Enterprise must maintain a liquidity portfolio with assets set forth in § 1241.11(b)(3) equal to or greater than the Enterprise's Highest Cumulative Daily Net Cash Outflows calculated to occur over the 365-day period beginning the day following the Calculation Date.

(3) For purposes of meeting the minimum required liquidity to cover the 365-day period following the Calculation Date, an Enterprise must hold assets consisting of:

(i) High Quality Liquid Assets;

(ii) Subject to a discount of 15 percent of the UPB forecasted to remain on the day on which the Highest Cumulative Daily Net Cash Outflows occur, Enterprise-guaranteed MBS that are eligible as collateral for FICC; or

(iii) Subject to a discount of 15 percent of the UPB forecasted to remain on the day on which the Highest Cumulative Daily Net Cash Outflows occur, mortgage loans that the Enterprise purchased through its cash window or whole loan conduit, or re-performing loans previously purchased from Enterprise MBS trusts, that are readily securitized into MBS that would be eligible as collateral for FICC.

(A) A single-family mortgage loan purchased through the cash window or whole loan conduit is deemed not readily securitized within the first 60 days following the Calculation Date, and is deemed readily securitized 30 days following the acquisition date of the loan if the loan was acquired after the first 30 days following the Calculation Date.

(B) For re-performing loans previously purchased out of Enterprise MBS trusts, such loans must be re-performing for at least 180 days in order to be deemed readily securitized into FICC-eligible collateral.

(c) *Minimum required long-term liquidity—(1) Ratio of Total Long-term Unsecured Debt to Total Less-liquid Retained Portfolio Assets must exceed 120 percent.* As of each Calculation Date, an Enterprise must maintain its Total Long-term Unsecured Debt in a proportion greater than 120 percent to its Total Less-liquid Retained Portfolio Assets, such that Total Long-term Unsecured Debt divided by Total Less-

liquid Retained Portfolio Assets exceeds 1.2 (*i.e.*, 120 percent).

(i) *Total Long-term Unsecured Debt* means the three-month moving average of the total UPB outstanding of all unsecured debt issued by the Enterprise with one year or longer to maturity remaining from the Calculation Date.

(ii) *Total Less-liquid Retained Portfolio Assets* means the three-month moving average of the UPB of all retained portfolio assets that are not eligible collateral to be pledged to the FICC. Loans purchased through the cash window or whole loan conduit and reperforming loans that are readily securitized into FICC-eligible collateral as described in § 1241.11(b)(3)(ii) are not included in Total Less-liquid Retained Portfolio Assets.

(2) *Ratio of Spread Duration of Unsecured Debt to Spread Duration of Retained Portfolio Assets must exceed 60 percent—(i) Enterprise election of spread duration methodology.* An Enterprise must, by the effective date of this part, sufficiently document its methodology to determine the spread duration of its unsecured debt and its retained portfolio assets. An Enterprise may not change its spread duration methodology without prior written approval from FHFA.

(ii) *Ratio of Spread Duration of Unsecured Debt to Spread Duration of Retained Portfolio Assets must exceed 60 percent.* As of each Calculation Date, an Enterprise must maintain its Spread Duration of Unsecured Debt in a proportion greater than 60 percent to its Spread Duration of Retained Portfolio Assets, such that its Spread Duration of Unsecured Debt divided by its Spread Duration of Retained Portfolio Assets exceeds 0.6.

(A) The Spread Duration of Unsecured Debt equals the three-month moving average of the daily spread duration of all Enterprise-issued unsecured debt for each business day during the previous three-month period.

(1) The daily spread duration of all Enterprise-issued unsecured debt on a particular business day equals the weighted average of the individual spread duration for each issue of unsecured debt weighted by the product of the UPB and the price for the issue of unsecured debt for that day.

(2) The three-month moving average of the daily spread duration of all Enterprise-issued unsecured debt is equal to the sum of the daily spread duration for all Enterprise-issued unsecured debt for each business day over the three-month period preceding the Calculation Date divided by the total number of business days during the three-month period.

(B) The Spread Duration of Retained Portfolio Assets equals the three-month moving average of the daily spread duration of all Enterprise retained portfolio assets funded in whole or in part by unsecured debt for each business day during the previous three-month period.

(1) The daily spread duration of all Enterprise retained portfolio assets funded in whole or in part by unsecured debt on a particular business day equals the weighted average of the individual spread duration for each such retained portfolio asset weighted by the product of the UPB and the price for the retained portfolio asset for that day.

(2) The three-month moving average of the daily spread duration of all Enterprise retained portfolio assets funded in whole or in part by unsecured debt is equal to the sum of the daily spread duration for all such Enterprise retained portfolio assets for each business day over the three-month period preceding the Calculation Date divided by the total number of business days during the three-month period.

(C) An Enterprise may use the following assumptions or exclusions for the specified assets and unsecured debt to calculate its Spread Duration of Unsecured Debt and Spread Duration of Retained Portfolio Assets:

(1) For callable debt issued by the Enterprise, the Enterprise may assume that it will not call its callable debt and, instead, use the maturity rather than the actual spread duration of its callable debt.

(2) For single-family loans that the Enterprise has purchased and that are in process of securitization, the Enterprise may assume, to the extent that the Enterprise sufficiently documents the evidentiary basis supporting the assumption, a certain holding period for the loans in order to calculate their spread duration, provided that the assumed holding period is not less than two months.

(3) For multifamily loans that the Enterprise has purchased and that are in process of securitization, the Enterprise may assume, to the extent that the Enterprise sufficiently documents the evidentiary basis supporting the assumption, a certain holding period for the loans in order to calculate their spread duration, provided that the assumed holding period is not less than six months.

(4) For Enterprise-created trusts whose assets are funded, not by unsecured debt issued by the Enterprise, but by debt issued by the respective trusts and backed by assets of the trusts, the Enterprise may exclude such trusts from its calculation of the Spread

Duration of Unsecured Debt and the Spread Duration of Retained Portfolio Assets. For example, the Enterprise may exclude from its calculation of the spread duration requirement certain trusts related to credit risk transfers, e.g., Freddie Mac STACR CLN Trusts and Fannie Mae CAS CLN Trusts.

(5) For High Quality Liquid Assets, an Enterprise may exclude such assets from its calculation of Spread Duration of Retained Portfolio Assets. An Enterprise may also exclude from its calculation of Spread Duration of Retained Portfolio Assets, Treasury assets that are posted as collateral with the FICC for initial margin.

§ 1241.12 Temporary reduction of liquidity requirements.

An Enterprise is not required to meet one or more of the minimum liquidity requirements if FHFA determines that, due to economic, market, or other circumstances, temporarily reduced liquidity levels are necessary or appropriate for the Enterprises to support liquidity in the secondary mortgage market. Such determination shall be evidenced by an FHFA order, which shall set forth the adjusted minimum liquidity requirements applicable to the Enterprise, and be temporary and time-limited to address the relevant circumstances.

Subpart C—Reporting Requirements

§ 1241.20 Required liquidity reporting.

(a) *Reporting to FHFA.* An Enterprise shall report to FHFA daily using the close of business position of the prior business day, the Enterprise calculations of its liquidity position and compliance under each of the minimum liquidity requirements, as of the Elected Calculation Time on the Calculation Date. Such reporting shall be in a form, manner, and content as directed by FHFA. At a minimum, the Enterprise liquidity reports shall include:

(1) The daily metric for each of the four liquidity requirements that demonstrates compliance with this part;

(2) Key stress scenario assumptions used to calculate Enterprise liquidity metrics, as well as any significant changes in those assumptions from prior reports;

(3) Summary of the respective cash flows for each of the stressed cash flow scenarios and other significant information related to the 30-day and 365-day metrics, e.g., the delinquent loan purchases, and cash window and whole loan conduit purchases;

(4) Supplemental reports explaining the components of the numerator and denominator of the first long-term

liquidity and funding requirement, e.g., the composition of the unsecured debt and the composition of FICC-eligible and non-FICC-eligible collateral; and

(5) Supplemental reports explaining the components of the numerator and denominator of the second long-term liquidity and funding requirement, e.g., the composition of the spread duration of the unsecured debt and the composition of the spread duration of the retained portfolio assets.

(b) *Minimum enterprise management reporting.* An Enterprise shall include in its internal management reports the Enterprise reports to FHFA required under paragraph (a) of this section. Enterprise management, in exercise of its prudential management obligations, may require additional reporting regarding Enterprise liquidity.

(c) *Public reporting.* An Enterprise shall make public monthly reports on its liquidity through its monthly volume summaries, reporting average and month-end liquidity positions for each of the minimum liquidity requirements including key assumptions used in the calculation of each of the four liquidity and funding requirements.

§ 1241.21 Reporting orders.

FHFA may, by order, specify or add to the form, manner, or content of required reporting. FHFA may amend such reporting orders from time to time as appropriate.

Subpart D—Supervisory Framework for Remediating Minimum Liquidity

§ 1241.30 Remediation of minimum liquidity shortfall.

(a) *Notification requirements.* An Enterprise must notify FHFA in writing, beyond the regular daily FHFA reporting, on any business day that the Enterprise liquidity position is calculated to be less than any of the minimum requirements set forth in § 1241.11 or any applicable modified temporary minimum liquidity requirements ordered by FHFA. An Enterprise must also notify FHFA in writing on any business day that the Enterprise liquidity position is calculated to be less than any of the minimum liquidity limits established by the Board of the Directors of the Enterprise.

(b) *Liquidity plan.* (1) If, as of a Calculation Date, an Enterprise's liquidity position is calculated to be less than any applicable liquidity requirements, the Enterprise must submit to FHFA a plan for achieving compliance with the applicable requirements, unless FHFA instructs otherwise.

(2) If FHFA determines that the Enterprise is otherwise non-compliant with applicable requirements of this part, FHFA may require the Enterprise to submit a plan for achieving compliance with the requirements.

(3) If the Enterprise is required to submit a plan for achieving compliance with applicable requirements of this part, the Enterprise must promptly submit its plan to FHFA for approval, consistently with § 1236.4.

(4) The Enterprise plan must include, as applicable:

(i) An assessment of the Enterprise's liquidity and funding profile, and the reasons for the shortfall;

(ii) The actions that the Enterprise has taken and will take to achieve full compliance with this part, including:

(A) A plan for adjusting the Enterprise's liquidity and funding risk profile, liquidity portfolio, liquidity and funding risk management practices, and funding sources in order to achieve full compliance with this part;

(B) A plan for remediating any operational or management issues that contributed to noncompliance with this part;

(C) A best estimate time frame for achieving full compliance with this part; and

(D) A commitment to report to FHFA daily on Enterprise progress to achieve compliance in accordance with the plan until full compliance with this part is achieved.

(iii) Other considerations or actions as may be required for FHFA approval.

(c) *Supervisory and enforcement actions.* FHFA may, at its sole discretion, take additional supervisory or enforcement actions to address non-compliance with the requirements of this part, including non-compliance with the minimum liquidity requirements or non-compliance with any requirement to submit a liquidity plan acceptable to FHFA.

§ 1241.31 Supervisory determination of temporarily increased liquidity requirements.

(a) *Notice.* Whenever FHFA determines that, due to economic, market, or Enterprise-specific circumstances, temporary modified minimum liquidity requirements above those established under this part are necessary or appropriate for an Enterprise, FHFA will notify the Enterprise in writing of the proposed modified temporarily increased Enterprise liquidity requirements, the timeframe by which the Enterprise is required to achieve and comply with the proposed requirements, and an explanation of why the proposed

modified Enterprise liquidity requirements are considered necessary or appropriate for the Enterprise.

(b) *Response.* (1) The Enterprise may respond in writing to any or all of the matters addressed in the notice. The response may include any information which the Enterprise would like FHFA to consider in determining whether the proposed temporarily increased liquidity requirements should be established for the Enterprise, and the timeframe for compliance with the proposed requirements. Any response from the Enterprise must be submitted in writing to FHFA within 30 days of the Enterprise receipt of the notice. FHFA may shorten the required Enterprise response time, when in the opinion of FHFA, the condition of the Enterprise so requires, provided that the Enterprise is informed promptly of the shortened response time, or with the consent of the Enterprise. In its discretion, FHFA may extend the Enterprise response time.

(2) Failure by the Enterprise to respond within 30 days or such other time period as may be specified by FHFA shall constitute a waiver of any objections to the proposed modified liquidity requirements or the timeframes for compliance.

(c) *Determination.* After the close of the Enterprise response time period, FHFA will determine, based on a review of the Enterprise response and other relevant information, whether the proposed requirements should be established for the Enterprise and, if so, the timeframe in which the requirements will be effective. FHFA will notify the Enterprise of its determination in writing. The determination will be accompanied by an order effectuating the modified liquidity requirements, which shall be temporary and time-limited to address the relevant circumstances. The determination will include a supporting explanation, except for a determination not to establish the proposed requirements.

(d) *Submission of plan.* FHFA's determination may require the Enterprise to develop and submit to FHFA, within a time period specified, an acceptable plan to reach and maintain the modified liquidity requirements.

Subpart E—[Reserved]

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Director, Federal Housing Finance Agency.
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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1242

RIN 2590-AB13

Resolution Planning

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA) is seeking comment on a proposed rule that would require Fannie Mae and Freddie Mac (the Enterprises) to develop plans to facilitate their rapid and orderly resolution in the event FHFA is appointed receiver. A resolution planning rule is an important part of FHFA's on-going effort to develop a robust prudential regulatory framework for the Enterprises, including capital, liquidity, and stress testing requirements, as well as enhanced oversight, which will be critical to FHFA supervision of the Enterprises after they exit the conservatorships. In addition, a resolution plan as proposed to be required would support FHFA if appointed as receiver to, among other things, minimize disruption in the national housing finance markets by providing for the continued operation of an Enterprise's core business lines by a limited-life regulated entity (LLRE); ensure that investors in mortgage-backed securities guaranteed by the Enterprises and in Enterprise unsecured debt bear losses in accordance with the priority of payments set out in the Safety and Soundness Act while minimizing unnecessary losses and costs to these investors; and, help foster market discipline in part through FHFA publication of "public" sections of Enterprise resolution plans.

DATES: Comments must be received on or before March 9, 2021.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590-AB13, by any one of the following methods:

- *Agency Website:* <https://www.fhfa.gov/open-for-comment-or-input>.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590-AB13.