

# America's Community Bankers

## Views on H. R. 3703

### *TITLE I--HOUSING FINANCE OVERSIGHT BOARD*

#### *Subtitle A--Improvement of Supervision*

##### *Sec. 101. Establishment of Board.*

- ACB supports the consolidation of both mission and safety-and-soundness oversight in a single regulator. That regulatory format presently exists for the FHFB.
- ACB is opposed to consolidating federal oversight of the FHLBank System with regulation of Fannie Mae and Freddie Mac because of the different nature of the capital base, ownership structure and the motivation for new programs. It would be difficult to maintain appropriate differential regulation of the FHLBanks and the other two GSEs in a single agency, considering the vastly different nature of their activities, asset structure and necessarily different approach to setting risk-based capital requirements.

##### *Sec. 102. Duties and Authorities of Board.*

- ACB strongly supports providing any regulator of the GSEs with strong supervisory authority. It is even more important that the regulator accepts and assumes that responsibility on a day-to-day basis. Creating a regulator with the singular responsibility of regulating Fannie Mae and Freddie Mac is a key to effective regulation and supervision

##### *Sec. 103. Public Disclosure of Information.*

- ACB supports public disclosure of information that would improve consumer understanding and improve market efficiencies. However, ACB opposes requiring disclosure of information of a proprietary nature or information that would be detrimental to GSE program delivery or that would increase residential mortgage credit costs.
- ACB supports the current practice of the GSEs which includes offering the equivalent information on their securities offerings as would be required under Securities and Exchange Commission rules. This practice offers investor protection without significant additional cost.
- ACB recommends that this and other disclosure requirements contained in the bill include a requirement for the regulator to conduct a cost-benefit analysis to determine that any additional burdens imposed by such disclosures do not exceed their value to the public.

##### *Sec. 105. Assessments.*

- ACB supports removing the funding for GSE regulation from the appropriations process.

*Sec. 106. Public Disclosure of Final Orders and Agreements.*

- See Section 103 above.

*Sec. 109. Termination of Authority of HUD.*

- If HUD's GSE related authority is included in the authorities of a new regulator, the legislation should also provide the regulator with the appropriate enforcement tools.
- If HUD's role is not revised, legislation may be necessary to ensure that HUD exercises its full regulatory authority and that it has adequate enforcement tools. Strengthening enforcement powers for breaches of statutory authorities and for failure to meet the annual affordable housing goals could be considered, as well as the need to clarify authorities consistent with the mission intended by Congress.

*Sec. 110. Approval of Board for New Activities.*

- ACB supports requiring new program or activity review and approval with appropriate public comment. The manner in which a new program approval process is crafted, however, is too complicated.
  - Any approval and review process must accommodate the need to maintain confidentiality of proprietary information, some of which belongs to counter party sellers/servicers bringing new product ideas to the GSEs. Such confidentiality must be preserved to encourage the innovation and creativity characteristic of the primary mortgage market.
  - Review periods must accommodate today's fast-moving markets; delays in approval can render a useful idea obsolete before it ever gets a chance to be introduced.
- ACB suggests considering a modified pilot-program approach. The concept of modest initial holdings, or of "pilot program" status, may address the above issues while providing the opportunity for important program review and approval by the federal regulator. The "pilot program" approach that the FHFB has used for certain new ventures might serve as a model allowing some experimentation with new or modified programs before allowing unlimited GSE purchases. However, a pilot program should require an analysis by the regulator of the program and the justification for expansion or elimination.
- ACB recommends that the new program approval process include, as a condition for any activity approval, that the GSEs maintain the appropriate arm's-length distance from the originator and the origination process.

- ACB also recommends that a new program approval process include, as a condition for any activity approval, that the new or modified program not be exclusive in nature, but that all GSE seller/servicers will have access at competitive prices and terms.

*Sec. 111. Limitation on Nonmission-related Assets.*

- The bill does not suggest how or to what extent the Regulator must limit nonmission-related assets, nor give any guidance in this crucial area. This is an area where great care is necessary. The GSEs have legitimate concerns about their need to retain certain investments as a buffer against the vagaries of demand for their securities. It could be more useful to require a study of the appropriate balance between the (off-balance-sheet) guarantor and (on-balance-sheet) investment activities of the GSEs.
- ACB would strongly support language that provides a clearer definition of Fannie Mae and Freddie Mac's mission of promoting home ownership by providing liquidity to the primary markets. ACB believes that the mission should dictate the GSEs' activities. The broad authorities provided to fulfill that mission should not be used to expand the statutory mission and activities of the GSEs. Incidental powers and business sidelines should not become major components of GSE activities without extensive review by the program regulator and oversight by the Congress.
  - Expansion of Fannie Mae and Freddie Mac into the home equity line of, or similar, credit market is not consistent with their basic mission and should be prohibited.
- ACB supports review of nonmission related investments and possible limits that would ensure that: (1) private sector market participants are not subjected to unfair competition and (2) safety and soundness standards are not violated.
  - ACB opposes limits that would impair a GSE's ability to maintain adequate liquidity or unnecessarily restrict its ability to manage its financial assets.

*Sec. 112. Conforming Loan Limits.*

- ACB supports maintenance of appropriate limits on the size of the mortgage loan that the GSEs can purchase and securitize. This section of the bill codifies the GSEs' current practice of offsetting declines in the underlying index against future increases in calculating the conforming loan size. It is symbolic of the intent of the Congress to focus the activities of the GSEs on that segment of the secondary market where government support is needed.

*Sec. 114. Supervision of Federal Home Loan Bank System.*

- ACB strongly opposes the consolidation of FHLBank System regulation with that of Fannie Mae and Freddie Mac. Although the legislation seeks to incorporate the

authorities of the FHLBank Act, such consolidation of regulation would not be in the best interests of the FHLBank System and its members because of the different nature of the capital base, ownership structure and the motivation for new programs. It would be difficult to maintain appropriate differential regulation of the FHLBanks and the other two GSEs in a single agency, considering the vastly different natures and necessarily different risk-based capital requirements

*Subtitle B--Reduction of Systemic Risk*

*Sec. 133. Risk-based Capital Test for Enterprises.*

- ACB supports risk-based capital standards that are consistent with the financial nature and structure of the GSEs.
- It is absolutely critical that the differences between the cooperative structure of the FHLBank System and the publicly traded corporate structures of Fannie Mae and Freddie Mac are incorporated into separate risk-based capital standards
- ACB opposes legislation that unnecessarily delays the implementation of the risk-based capital rules for Fannie Mae and Freddie Mac. OFHEO has spent considerable time developing those rules and they are now close to being implemented.

*Sec. 136. Repeal of Treasury Lines of Credit.*

- ACB does not support repeal of the Treasury lines of credit. Although they account for little more than a single day's business for the GSEs, the Treasury lines of credit are significant to all of the GSEs. To date, not one of the GSEs has had to ask Treasury to use the lines of credit.
- While none of the GSEs are backed by the full faith and credit of the federal government, the Treasury line of credit, although largely symbolic, carries significance in the financial markets. Eliminating the Treasury line of credit could be expected to increase residential mortgage credit costs and reduce the value of current portfolios of GSE securities and debt instruments. Careful review of the costs balanced against any benefits of a repeal should be considered before such action is approved.
  - These "lines of credit" are often mischaracterized: they are not like the lines that many businesses have negotiated with banks whereby the drawdown is at the option of the business, not of the bank. Rather, the Treasury makes the call on whether turbulent financial markets would be reassured if the Treasury were to purchase a limited amount of GSE securities. Though unlikely ever to be used, this is a worthwhile backstop authority whose very existence makes it less likely to be needed.

*Sec. 138. Elimination of Super-lien for Federal Home Loan Banks.*

- ACB opposes the repeal of the FHLBanks' super-lien authority. While a FHLBank could act to secure the collateral, effectively providing similar credit priority, to do so would add new costs for the FHLBanks and slow transactions for member institutions. There is little, if any, accompanying benefit and such changes would in turn increase the cost of advances and the cost of residential and community-based credit.

*Sec. 140. Capital Treatment of Private Label Mortgage-backed Securities.*

- ACB supports the sense of the Congress provision that the proposed rules issued jointly by the federal banking agencies, addressing the treatment of privately issued mortgage backed securities under risk-based capital requirements, should be adopted as final with no substantive changes.
  - The proposed rules afford private label MBS, if AAA rated, the same treatment as similar securities issued by the GSEs.
- Adoption of these rules might assist in reducing the GSE debt concentrations at the financial institution level by giving private label MBS debt similar capital treatment as GSE issued debt

*Sec. 141. Study of Effects of GSE Failure on Depository Institutions.*

- ACB supports requiring such a study.