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Alfred M. Pollard, Esq.  
General Counsel  
Federal Housing Finance Agency  
400 7<sup>th</sup> Street, SW  
Washington, D.C. 20024  
By email to RegComments@FHFA.gov

Re: RIN 2590-AA66 – Proposed Rule on Waivers, Approvals,  
Non-Objection Letters, and Regulatory Interpretations

Dear Mr. Pollard,

The Federal Housing Finance Agency (“FHFA”) is proposing to amend its regulations by revising and relocating in the Code of Federal Regulations an existing Federal Housing Finance Board regulation currently applicable only to the Federal Home Loan Banks (“FHLBs”) and the Office of Finance. The existing regulation provides a process for the FHLBs and the Office of Finance to request waivers, approvals, no-action letters, and regulatory interpretations. The Proposed Rule would, among other things, extend the existing regulation to Fannie Mae and Freddie Mac.

Below are Fannie Mae’s comments on the Proposed Rule. Fannie Mae believes that these modifications to the Proposed Rule would help to clarify and facilitate its application.

### **1. Use of Conservatorship Procedures**

Fannie Mae appreciates that the procedures established by the Proposed Rule are intended to be used to address “regulatory matters” and not “conservatorship matters.” However, Fannie Mae believes that distinguishing between “regulatory matters” and “conservatorship matters” would be difficult given the breadth of conservatorship operations. Moreover, FHFA has established detailed procedures (“Protocols”) for any business matter “for which the Enterprise, or FHFA, requests review as Conservator, whether for formal approval, consultation, or an objection/no objection response, including decisions related to the Strategic Plan for Conservatorship.”<sup>1</sup> As a result, because it may be unclear whether Fannie Mae should make application to FHFA for action in its role as regulator, as provided under the Proposed Rule, or in its role as conservator, as provided under the Protocols, Fannie Mae may select the inappropriate option, have to make duplicate applications, or otherwise unintentionally not comply with the requirements of the Proposed Rule and/or the Protocols.

To eliminate the potential difficulties created by these potentially overlapping processes, Fannie Mae requests that the Proposed Rule be modified to allow a regulated entity in conservatorship

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<sup>1</sup> Conservatorship Decision Protocols (Nov. 2012) at 2.

to utilize a single point of entry. This could be accomplished by revising (as italicized) the introduction of Section 1211.6 to read as follows:

**§ 1211.6 Submission requirements.**

*Applications for a Waiver or Approval and requests for a Non-Objection Letter or Regulatory Interpretation under this Part shall comply with the requirements of this section and shall pertain to regulatory matters relating to the Banks or Enterprises and not to conservatorship matters. During such time as a regulated entity is in conservatorship, it may submit requests for waivers, approvals non-objection letters, and regulatory interpretations to the conservator, in accordance with procedures that have been established by the conservator, rather than under this Part.*

Using this process, a regulated entity in conservatorship that was uncertain whether an application pertained to a regulatory matter or a conservatorship matter could use the procedures established by the Protocols. If the conservator determined that the application did not pertain to a conservatorship matter, the conservator could reroute the application, or direct the regulated entity to resubmit the application under this Part, as appropriate.

**2. Submission Requirements: Authorization**

To facilitate the process under the Proposed Rule, Fannie Mae recommends that the authority to request FHFA action under Section 1211.6 (b) be assigned to its General Counsel (or the General Counsel's delegate) rather than to its President. In addition, Fannie Mae recommends that the requirement for a resolution of the board of directors "concurring in the substance and authorizing the filing of the application" be eliminated.

The General Counsel, an executive vice president, is delegated broad authority from the Chief Executive Officer to serve as principal legal counsel for the company. Given the legalistic nature both of the actions sought and the information required to submit an application under the Proposed Rule, this authority is appropriately vested in the General Counsel or his or her delegate. In addition, because the board serves in an oversight role for the company rather than managing its day-to-day operations, the requirement for a board resolution is not appropriate. Indeed, given the limited number of board meetings, the logistics of securing such a resolution could unnecessarily impede the process.

For these reasons, Fannie Mae requests that the Proposed Rule be modified by revising Section 1211.6 (b) to read as follows.

*(b) Authorization. An application for a Waiver or Approval and a request for a Non-Objection Letter or Regulatory Interpretation shall be signed by the ~~president~~ general counsel of the regulated entity or ~~by the chairperson of the board of directors of~~ the Office of Finance, as appropriate. ~~Applications for Waiver or Approval also shall be accompanied by a resolution of the board of directors concurring in the substance and authorizing the filing of the application.~~*

### **3. Alternative Procedures**

In pertinent part, Section 1211.3 (b) provides that a regulated entity may apply for an Approval under the Proposed Rule “unless alternative application procedures are prescribed ... for the transaction, activity, or item at issue.” By way of example, the preamble indicates that the Proposed Rule would not apply to 12 CFR Part 1272, New Business Activities, because it represents an alternative application procedure.<sup>2</sup>

It is unclear what other exceptions to the application of the Proposed Rule exist. Given its parallel nature to the example cited, Fannie Mae assumes that 12 CFR 1253, Prior Approval for Enterprise Products, also should be excepted. In addition, we believe that other regulations applicable to the Enterprises under which FHFA’s approval may be sought should also be excepted to facilitate the process under the excepted regulations and avoid unnecessary red tape.

Accordingly, Fannie Mae requests that the Proposed Rule be modified by adding a new paragraph (c) and (d) to Section 1211.3 to read as follows.

(c) *Alternative Application Procedures for the Enterprises.* The following regulations are deemed to be alternative application procedures for the Enterprises:

- (1) Executive Compensation (12 CFR Part 1203);
- (2) Suspended Counterparty Program (12 CFR Part 1227);
- (3) Golden Parachute Payments (12 CFR Part 1231);
- (4) Prudential Management and Operations Standards (12 CFR Part 1236);
- (5) Responsibilities of Boards of Directors, Corporate Practices and Corporate Governance Matters (12 CFR Part 1239);
- (6) Book–Entry Procedures (12 CFR Part 1249);
- (7) Prior Approval for Enterprise Products (12 CFR Part 1253);
- (8) Enterprise Housing Goals (12 CFR Part 1282); and
- (9) such other regulations as FHFA may designate.

(d) *Alternative Application Procedures for the Federal Home Loan Banks and the Office of Finance.* The following regulations are deemed to be alternative application procedures for the Banks and the Office of Finance:

- (1) New Business Activities (12 CFR Part 1272); ... ; and
- ( ) such other regulations as FHFA may designate.

### **4. Proposed Technical Changes**

A. Section 1211.3(c). From time to time, FHFA has informed Fannie Mae that it had no objection to a proposed transaction or activity, as an alternative to formally approving the transaction or activity. We believe this flexibility should continue within the regulatory

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<sup>2</sup> Proposed Rule at 15258.

framework established by the Proposed Rule. Accordingly, the addition of a new final sentence (in italics) is proposed as a modification to Section 1211.3(c), to read as follows:

(c) *Reservation.* The Deputy Directors for Enterprise Regulation and for Federal Home Loan Bank Regulation, as appropriate, may, in their discretion, prescribe additional or alternative procedures for any application for approval of a transaction, activity, or item. *As an alternative to granting or denying an application for an Approval, the Deputy Directors may also, in their discretion, issue a Non-Objection Letter.*

B. Sections 1211.1 and 1211.5. Section 1211.5 of the Proposed Rule provides that FHFA's General Counsel may, in his or her discretion, issue a Regulatory Interpretation providing guidance regarding the application of a statute, rule, regulation or order to a "proposed transaction or activity." The preamble to the Proposed Rule advises that "a request for a regulatory interpretation must relate to a proposed transaction or activity, not to a hypothetical situation."<sup>3</sup>

Fannie Mae suggest that references to a "proposed transaction or activity" be removed from the Proposed Rule given (1) the difficulty of distinguishing between a "hypothetical" and a "proposed" activity; (2) it may unnecessarily utilize resources to advance a transaction or activity to a "proposed" stage in the absence of a Regulatory Interpretation; and (3) the General Counsel may in his or her discretion decline to issue a Regulatory Interpretation if he or she believes that the proposal requires further development before a Regulatory Interpretation may be issued.

Accordingly, Fannie Mae proposes that the Definitions and Regulatory Interpretations sections be revised to eliminate references to "proposed transaction or activity," as follows:

**§ 1211.1 Definitions.**

... *Regulatory Interpretation* means a written interpretation issued by the FHFA General Counsel with respect to the application of a statute, rule, regulation, or order ~~to a proposed transaction or activity.~~ ...

**§ 1211.5 Regulatory Interpretations.**

(a) *Authority.* The General Counsel may, in his or her discretion, issue a Regulatory Interpretation to a regulated entity or the Office of Finance, providing guidance with respect to the application of any applicable statute, rule, regulation, or order ~~to a proposed transaction or activity.~~ ...

C. Section 1211.6(d). Section 1211.6(d) provides that FHFA's Deputy Directors and General Counsel may accept an application or request that does not comply with the submission requirements established by Section 1211.6 "for supervisory reasons or administrative efficiency." We appreciate that this provision allows for flexibility so that form will not prevail over substance. However, we also think it is important to recognize that in some situations,

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<sup>3</sup>Id. at 15259.

application of this Part at all will not be appropriate to the facts and circumstances, given the significant formal process that it contemplates. Moreover, it may undercut the longstanding productive working relationship that allows FHFA to respond to the regulated entities on an informal and timely basis.

Accordingly, we recommend the revision of Section 1211.6 (d) to read as follows:

(d) *Exceptions.* In any given matter or class of matters, the Director, the Deputy Director for Federal Home Loan Bank Regulation, the Deputy Director for Enterprise Regulation, or the General Counsel, as appropriate, may accept an application or request that does not comply with the requirements of this section, *or may waive the application of this Part*, for supervisory reasons or reasons of administrative efficiency

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Fannie Mae appreciates having the opportunity to comment on the Proposed Rule. If you have any questions or require any additional information, please contact the undersigned at (202) 752-3234 or [julie\\_katzman@fanniemae.com](mailto:julie_katzman@fanniemae.com).

Sincerely,



Julie E. Katzman  
Vice President and Deputy General Counsel