November 15, 2018

Attention: Federal Housing Finance Agency (FHFA)

RIN: 2590-AA94, Uniform Mortgage-Backed Security – 12 CFR Part 1248

The Community Mortgage Lenders of America (The CMLA), a Washington, DC based Advocacy Association exclusively representing small and mid-sized community-based independent mortgage companies, community banks, and credit unions, would like to thank the Federal Housing Finance Agency (FHFA) for allowing us to comment on RIN – 2590-AA94, Uniform Mortgage-Backed Security 12 CFR Part 1248 Proposed Rule.

The CMLA is supportive of the stated objectives of the initiative to foster the creation of a Uniform Mortgage-Backed Security (UMBS) under the auspices of the Common Securitization Platform (CSP). The CMLA agrees that the creation and development of the UMBS will serve to improve liquidity, efficiency and competition in the mortgage-backed securities markets, the benefits of which will ultimately be passed on to consumers. The CMLA also recognizes the difficulties encountered by the FHFA in supervising the implementation of these profound changes to the MBS markets while ensuring the safety and soundness of Fannie Mae and Freddie Mac. The CMLA therefore supports the creation and implementation of the CSP in 2019, but would like to offer a few comments on aspects of the Proposed Rule that the FHFA may find constructive.

The proposed rules emphasize the creation of policies and procedures designed to ensure that there are no identifiable and persistent differences in the cash flows of UMBS issued by Fannie Mae and Freddie Mac. The CMLA agrees that the creation of the UMBS requires policies ensuring that the cash flows of UMBS created by the two Enterprises will be "sufficiently similar as to not induce UMBS investors to make stipulated trades." The FHFA defines "stipulated trades" to mean a forward TBA trade in the new UMBS where the buyer will only accept for delivery UMBS issued by a particular enterprise. A large number of stipulated trades could fragment the TBA market and impair, rather than improve, its liquidity.

In this light, The CMLA believes that the emphasis on aligning the policies, programs and practices of Fannie Mae and Freddie Mac in order to maintain the fungibility of the cash flows of pools issued by the two Enterprises is wise. The most obvious threat to the fungibility of the two Enterprises' pools will be systematic differences in the prepayment speeds of UMBS issued by the different Enterprises. The proposed rule defines a material difference as "differences between actual Fannie Mae and Freddie Mac prepayment speeds when the divergence for a cohort exceeded a one-month conditional prepayment rate (CPR) of two percentage points," while a three percentage point difference "would require that the Enterprises report the likely cause of the divergence." However, The CMLA suggests that these definitions of materiality be changed to measure differences in either the three-month CPR or a 3-month moving average of one-month CPRs for comparable Freddie Mac and Fannie Mae cohorts. This change would serve to reduce the influence of random and otherwise non-systematic differences between the

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prepayment rates of two Enterprises and allow for more meaningful monitoring of relative prepayment speeds.

The CMLA recognizes that stipulated trades may also be undertaken by market participants for reasons not related to differences in prepayment speeds or cash flows. For example, some investors may have issuer limits written into their charters or investment guidelines that dictate the maximum proportion of the investment portfolio that can be issued by a particular entity. Such clauses may force investors to buy UMBS either through the purchase of a stipulated TBA or by buying specified pools; both of these eventualities will serve to detract from the liquidity of the UMBS TBA market. This source of fragmentation is probably unavoidable without some form of cross-guarantee between the two Enterprises, which the FHFA has considered and rejected. (Even if the market consists primarily of "Super" pools [i.e., re-securitizations of existing Freddie Mac and Fannie Mae first-level pools], they will also be issued by one or the other Enterprise and thus will be subject to the types of issuer limits described above.) Therefore, The CMLA recommends that, in conjunction with tracking and comparing prepayment speeds of relevant cohorts, the number and face value of trades with Enterprise stipulations be monitored by the FHFA in order to identify a "normal" level of stipulated trades and gauge whether a disproportionate share of stipulated trades have been executed.

Another potential source of market fragmentation would be differences in the perceived credit quality of the two Enterprises. At this writing, both Fannie Mae and Freddie Mac are in conservatorship, meaning that their credit quality is identical. It is anticipated, however, that Fannie Mae and Freddie Mac will both eventually leave conservatorship and be operated under a different legal and operational framework. Depending on what legal and managerial form is eventually adopted for the Enterprises, it is possible that one or the other may encounter financial challenges, resulting in a meaningfully different in the financial strength and viability of the two Enterprises. The FHFA may need to consider whether a return to conservatorship by one Enterprise means that the other must also undergo a change in its legal status, including being placed in conservatorship, in order to avoid fragmentation of the UMBS TBA market due to credit considerations.

Finally, the need to create fungibility for the two Enterprise's pools must be balanced against the necessity of competition between the two Enterprises. Both Fannie Mae and Freddie Mac have emphasized that issuing pools under the CSP will not constitute a merger of the two enterprises; rather, they will be operated independently and continue to compete with each other. In addition to price, such competition may take the form of innovative product features designed to appeal to lenders and consumers. Such competition may take forms that are not consistent with the clauses in proposed § 1248.3 and § 1248.4 regarding the alignment of the "programs, policies and practices" of the two Enterprises. For example, The CMLA is concerned that consumers would be harmed by a regime where attractive and innovative program features cannot be offered to lenders by Fannie Mae and Freddie Mac as an outgrowth of the alignment clause in the proposed rule. One possible compromise would be that loans issued under new programs that could cause cash flow misalignment and thus be subject to the FHFA's scrutiny, as outlined in § 1248, be securitized as part of the de minimis exemption normally utilized for

"super-conforming" loans[1]. Under this proposal, 10% of any deliverable UMBS pool's balance might consist of both super-conforming loans and loans issued under new programs subject to FHFA scrutiny. Loans issued under the new programs would only be securitized without restriction once the FHFA is satisfied that such loans would not prepay in a materially different fashion and thus would not misalign the cash flows of UMBS issued by the different Enterprises.

The Community Mortgage Lenders of America would again like to thank the Federal Housing Finance Agency (FHFA) for allowing us to comment on RIN – 2590-AA94, Uniform Mortgage-Backed Security 12 CFR Part 1248 Proposed Rule.

[1] "Super-conforming" or "jumbo-conforming" loans are originated in high-cost areas and have balances greater than the statutory limit of the Agencies. MBS pooling and delivery rules allow up to 10% of the total balance of pools that are deliverable into TBAs to consist of such loans.

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