

## Comments on RIN 2590-AB23 (Rulemaking on Suspended Counterparty Program)

I am writing to express my strong support for the proposed rule to amend the Suspended Counterparty Program (SCP) regulation. I commend FHFA for taking this initiative to enhance its ability to protect the safety and soundness of the regulated entities (Fannie Mae, Freddie Mac, and the Federal Home Loan Banks) and the secondary mortgage market from unscrupulous or unreliable counterparties.

I believe that expanding the categories of covered misconduct to include civil enforcement actions that involve fraud, false statements, or deceptive practices is a prudent and necessary step to address the evolving risks and challenges in the mortgage industry. I also agree that eliminating the requirement for a proposed suspension order before a final suspension order when the suspension is based on an administrative sanction is a reasonable and efficient way to streamline the suspension process and avoid duplication of efforts.

However, I also have some comments on the proposed rule.

The rule should define what constitutes a civil enforcement action that involves fraud, false statements, or deceptive practices. The proposed rule does not provide a clear definition of what types of civil enforcement actions fall under the scope of the SCP regulation. This could create confusion or disputes about whether a certain case qualifies as a basis for suspension. It could also lead to inconsistency or arbitrariness in applying the SCP regulation across different cases. Therefore, I suggest that FHFA provide a clear and comprehensive definition of what constitutes a civil enforcement action that involves fraud, false statements, or deceptive practices. The definition should also specify what types of evidence or documentation are required to prove such an action. For example, FHFA could adopt or adapt the definition of fraud used by the Department of Justice in its [Fraud Section], which states:

*Fraud is generally defined in the law as an intentional misrepresentation of material existing fact made by one person to another with knowledge of its falsity and for the purpose of inducing the other person to act, and upon which the other person relies with resulting injury or damage.*

A possible regulatory wording could be:

*For purposes of this part, a civil enforcement action means any action brought by a federal, state, or local government agency or entity in a court of law or an administrative tribunal against a person or entity for violating any law, regulation, rule, order, consent decree, settlement agreement, or other legal obligation. A civil enforcement action involves fraud, false statements, or deceptive practices if it alleges or establishes that the*

*person or entity intentionally misrepresented, concealed, omitted, or otherwise distorted material facts or information with the intent to deceive, mislead, or harm another party. Such an action must be supported by credible evidence or documentation, such as court filings, judgments, orders, affidavits, declarations, admissions, testimonies, reports, audits, investigations, findings, settlements, or other similar records.*

The rule should clarify how FHFA will determine the duration and scope of a suspension based on a civil enforcement action. The proposed rule does not explain how FHFA will decide how long and how broadly a suspension based on a civil enforcement action will apply. This could create uncertainty or unfairness for the affected party and the regulated entities. It could also undermine the effectiveness and credibility of the SCP regulation. Therefore, I suggest that FHFA provide more clarity and guidance on how it will determine the duration and scope of a suspension based on a civil enforcement action. The determination should take into account factors such as the severity and frequency of the misconduct, the impact and harm caused by the misconduct, the remedial actions taken by the affected party, and the public interest and policy objectives of FHFA and the regulated entities. For example, FHFA could adopt or adapt the criteria used by the Department of Housing and Urban Development (HUD) in its [Limited Denial of Participation (LDP) program], which states:

*The duration of an LDP is generally not less than 12 months nor more than 36 months from its effective date unless there are aggravating circumstances warranting a longer period. The scope of an LDP may be limited to one HUD program office; may cover all HUD programs within one HUD Field Office jurisdiction; may cover all HUD programs within more than one HUD Field Office jurisdiction; may cover all HUD programs nationwide; may cover all HUD programs worldwide; may be limited to one legal entity; may cover all legal entities controlled by one individual; may cover all legal entities controlled by more than one individual; may cover all legal entities controlled by one organization; may cover all legal entities controlled by more than one organization; may cover all individuals who participated in an act or omission; may cover all organizations that participated in an act or omission; may cover any combination thereof; or may cover any other scope that the Deputy Assistant Secretary for Single Family Housing or designee determines is appropriate.*

A possible regulatory wording for this suggestion could be:

*The duration and scope of a suspension based on a civil enforcement action will be determined by the Director or designee in accordance with the facts and circumstances of each case and the public interest and policy objectives of FHFA and the regulated entities. The duration of a suspension will generally not exceed five years from its effective date unless there are aggravating circumstances warranting a longer period. The scope of a suspension may be limited to one or more specific types of transactions, products, services, or activities involving one or more regulated entities; may cover all*

*transactions, products, services, or activities involving one or more regulated entities; may cover all transactions, products, services, or activities involving any entity under the supervision or oversight of FHFA; may cover all transactions, products, services, or activities involving any entity in the secondary mortgage market; may be limited to one legal entity; may cover all legal entities controlled by one individual; may cover all legal entities controlled by more than one individual; may cover all legal entities controlled by one organization; may cover all legal entities controlled by more than one organization; may cover all individuals who participated in an act or omission; may cover all organizations that participated in an act or omission; may cover any combination thereof; or may cover any other scope that the Director or designee determines is appropriate.*

The Rule should properly provide an opportunity for the affected party to appeal or request a review of a suspension decision based on a civil enforcement action. The proposed rule does not provide any mechanism for the affected party to challenge or seek reconsideration of a suspension decision based on a civil enforcement action. This could violate the due process rights of the affected party and deprive them of a chance to correct or mitigate the suspension decision. It could also result in errors or mistakes in the suspension decision that could harm the affected party and the regulated entities.

Therefore, I suggest that FHFA provide an opportunity for the affected party to appeal or request a review of a suspension decision based on a civil enforcement action. The appeal or review should be conducted by an independent and impartial official or body within FHFA who has not been involved in the suspension decision. The appeal or review should also follow clear and fair criteria and procedures that ensure timely and adequate notice, opportunity to respond, access to evidence, and written explanation of the outcome. For example, FHFA could adopt or adapt the process used by the Department of Treasury in its [Suspension and Debarment Program], which states:

*An individual or entity suspended or proposed for debarment has 30 days from receipt of notice to submit information and argument in opposition to the action taken. An individual or entity debarred has 30 days from receipt of notice to request reconsideration of the debarment decision. Requests for reconsideration must be based on information not previously considered by Treasury. The Treasury Suspension and Debarment Official (SDO) will consider any information submitted by an individual or entity in response to a notice of suspension, proposed debarment, or debarment. The SDO will issue a written decision within 45 days after receipt of such information. The SDO's decision constitutes final agency action.*

A possible regulatory text wording for this suggestion could be:

*An individual or entity suspended based on a civil enforcement action has 30 days from receipt of notice to appeal or request a review of the suspension decision. Appeals or requests for review must be based on information not previously considered by FHFA.*

*The FHFA Suspension Review Official (SRO) will consider any information submitted by an individual or entity in response to a notice of suspension. The SRO will be an independent and impartial official within FHFA who has not been involved in the suspension decision. The SRO will issue a written decision within 45 days after receipt of such information. The SRO's decision constitutes final agency action.*

Thank you for considering my comments on the proposed rule.

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