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Federal Housing Finance Agency  
Washington, DC  
By Email: [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov)

Re: Proposed Enterprise New Product; Comment Request “Freddie Mac Single-Family Closed-End Second Mortgages,” (No. 2024–N–5)<sup>1</sup>

Dear Sir or Madam:

Arch Mortgage Insurance Company and United Guaranty Residential Insurance Company (together, “Arch MI”) is submitting these comments in response to the Federal Housing Finance Agency’s (“FHFA”) request for comments on a proposal by Freddie Mac to purchase certain single-family closed-end second mortgages as a new product.

While Arch MI commends FHFA’s decision to seek public comment on this proposed new product, Arch MI is not persuaded that Freddie Mac has met the burden of proof in demonstrating that this product is in the public’s interest as required under FHFA’s New Enterprise Products and Activities Rule. While the product may meet these requirements, Arch MI does not believe adequate information has been provided to make that determination.

Rather than require the market to provide feedback on whether a new product is permissible and advisable de novo, Arch MI suggests that the Enterprise seeking new product approval be required to submit a business case to the FHFA supporting its conclusion that the new product is in the public interest and, in turn, the FHFA should publish the business case in conjunction with its request for comment. For instance, the business case should provide detail around the proposed program parameters, including targeted consumers, pricing and capital impact on the Enterprise to allow for a more thorough evaluation.

Based on the limited information published to date, Arch MI is unable to evaluate the degree to which Freddie Mac’s pilot program advances a public interest, noting, however, that if the pilot

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<sup>1</sup> Published in the Federal Register on April 22, 2024 at <https://www.federalregister.gov/documents/2024/04/22/2024-08479/freddie-mac-proposed-purchase-of-single-family-closed-end-second-mortgages-comment-request>.

ultimately proceeds, Arch MI supports Freddie Mac's commitment to hold these loans in portfolio for a sufficient period to accrue a critical mass to enable credit risk transfer transactions to protect American taxpayers from possible loss.

### **The New Enterprise Products and Activities Rule**

In December 2022, the FHFA finalized the New Enterprise Products and Activities Rule<sup>2</sup> (the "New Products Rule"), which requires Fannie Mae and Freddie Mac (the "Enterprises") to provide advance notice to the FHFA before undertaking a new activity and to obtain prior approval from FHFA before offering a new product to the market. Pursuant to the New Products Rule, the Director is required to make a determination that the proposed new product is in *the public interest*<sup>3</sup>, considering the following enumerated factors:

- (1) The degree to which the new product might advance any of the purposes of the Enterprise under its authorizing statute;
- (2) The degree to which the new product serves underserved markets and housing goals;
- (3) The degree to which the new product is being or could be supplied by other market participants;
- (4) The degree to which the new product promotes competition in the marketplace or, to the contrary, would result in less competition;
- (5) The degree to which the new product overcomes natural market barriers or inefficiencies;
- (6) The degree to which the new product might raise or mitigate risks to the mortgage finance or financial system;
- (7) The degree to which the new product furthers fair housing and fair lending; and
- (8) Such other factors as determined appropriate by the Director.<sup>4</sup>

FHFA's Comment Request on Freddie Mac's Proposed Purchase of Single-Family Closed-End Second Mortgage (the "Second Mortgage Product")<sup>5</sup> marks the first time that FHFA has sought feedback pursuant to the New Products Rule. Arch MI commends the FHFA's decision to seek

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<sup>2</sup> 12 CFR part 1253.

<sup>3</sup> Emphasis added.

<sup>4</sup> [12 CFR 1253.4\(b\)](https://www.ecfr.gov/current/title-12/chapter-XII/subchapter-C/part-1253/section-1253.4#p-1253.4(b)) at [https://www.ecfr.gov/current/title-12/chapter-XII/subchapter-C/part-1253/section-1253.4#p-1253.4\(b\)](https://www.ecfr.gov/current/title-12/chapter-XII/subchapter-C/part-1253/section-1253.4#p-1253.4(b)).

<sup>5</sup> Published in the Federal Register on April 22, 2024 at <https://www.federalregister.gov/documents/2024/04/22/2024-08479/freddie-mac-proposed-purchase-of-single-family-closed-end-second-mortgages-comment-request>.

feedback, as purchasing second mortgages clearly constitutes a new product under the rule. However, Arch MI believes that this process could be much more effective if the Enterprise and the FHFA provide the market with a full analysis of how the Second Mortgage Product is in the public's interest with the Comment Request. To date, scant details have been shared supporting how the Second Mortgage Product is in the public interest, and the Comment Request does not adequately address the factors listed above.

### **Freddie Mac Should Provide an Analysis of the Competitive Impact of the New Product**

One of the critical questions in determining new product approval by FHFA is whether the proposed new product is already provided by other market participants (see criteria (3) above). The second-lien market is a well-established sector with the private capital markets open and numerous private lenders offering a variety of products. Arch MI suggests that Freddie Mac be required to conduct a market survey of the existing closed-end second mortgage market and analyze the potential impact that its new product could have on various market segments.

### **Conclusion**

Arch MI urges the FHFA to carefully scrutinize Freddie Mac's justifications for this new product, as described above. The burden of proof regarding market need rests firmly with Freddie Mac.

Arch MI believes a data-driven approach is crucial. This includes addressing the (8) criteria listed in the New Products Rule, which should include a comprehensive analysis of the existing private market, focusing on specific borrower segments most likely to benefit from this proposed product. An Enterprise's impact analysis should be shared in conjunction with FHFA's Comment Request. Requiring this level of rigor will ensure that the Enterprises are tailoring new products consistent with the Safety and Soundness Act<sup>6</sup>, while also providing the industry the opportunity to provide more effective feedback.

Only after such an analysis is completed by the Enterprise and commented upon by the industry, will the FHFA have a fulsome view of whether Freddie Mac's entry truly addresses a gap in the market and serves the public interest.

Sincerely,



David Gansberg

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<sup>6</sup> Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended at [12 U.S.C. 4501](#).