

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1248

RIN 2590-AA94

Uniform Mortgage-Backed Security

AGENCY: Federal Housing Finance Agency.

ACTION: Final Rule.

SUMMARY: The Federal Housing Finance Agency (FHFA or Agency) is issuing a final rule to improve the liquidity of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) To-Be-Announced (TBA) eligible mortgage-backed securities (MBS) by requiring the Enterprises to maintain policies that promote aligned investor cash flows for both current TBA-eligible MBS, and, upon its implementation, for the Uniform Mortgage-Backed Security (UMBS) – a common, fungible MBS that will be eligible for trading in the TBA market for fixed-rate mortgage loans backed by one-to-four unit (single-family) properties. The final rule codifies alignment requirements that FHFA implemented under the Fannie Mae and Freddie Mac conservatorships. The rule is integral to the successful transition to and ongoing fungibility of the UMBS. FHFA has announced that the Enterprises will begin issuing UMBS in place of their current TBA-eligible securities on June 3, 2019.

DATES: This rule is effective: **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Robert Fishman, Deputy Director, Division of Conservatorship, (202) 649-3527, Robert.Fishman@fhfa.gov, or James P. Jordan, Associate General Counsel, Office of General Counsel, (202) 649-3075, James.Jordan@fhfa.gov. These are not toll-free numbers. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 17, 2018, FHFA published in the *Federal Register* and requested public comment on a Notice of Proposed Rulemaking (NPR or proposed rule) to improve the liquidity of the Enterprises' TBA MBS by requiring the Enterprises to maintain policies that promote aligned investor cash flows both for current TBA-eligible MBS, and, upon its implementation, for the UMBS – a common, fungible MBS that will be eligible for trading in the TBA market for fixed-rate mortgage loans backed by one-to-four unit (single-family) properties.

In response to FHFA's solicitation of comments, FHFA received 12 comment letters, the majority of which were supportive of the proposed rule and the UMBS initiative. FHFA carefully considered all comment letters and commenter recommendations. In some instances, FHFA accepted commenter recommendations in the formulation of the final rule. A discussion of FHFA's rationale follows below.

II. Summary of Comments and FHFA Responses

The NPR explained in some detail FHFA's basis for believing that establishing a

unified TBA market for the MBS of both Enterprises would enhance mortgage market liquidity, with ultimate benefits for the nation as a whole.¹ While a minority of commenters disputed FHFA’s conclusion, nothing in the comments received in response to the NPR undermined FHFA’s basis for the rule.

One commenter argued that the UMBS would not promote liquidity because investors might “move to stipulated trading ... [p]rimarily because investors do not view Fannie and Freddie MBS as interchangeable,” and that “Fannie and Freddie MBS are materially different [because] they tend to have different ‘prepayment’ speeds,” with Freddie Mac’s prepayment speeds being higher. However, the principal purpose of the rule is to solve that problem by aligning Fannie Mae and Freddie Mac’s prepayment speeds. Indeed, during conservatorship, and specifically as a result of the Single-Security Initiative, prepayment speeds already have moved substantially toward alignment.² That movement, reinforced by this rule, removes the primary obstacle to UMBS and to the additional liquidity in the mortgage market that it will create.

Pool Characteristics

Several commenters expressed concern that the proposed rule did not explicitly require alignment or monitoring of pool characteristics, and that this might cause misalignment of cash flows to investors as interest rates change. The Securities Industry and Financial Markets Association (SIFMA) suggested revisions to the definition of “covered programs, policies, and practices” to include reference to pool characteristics

¹ See 83 FR 46889, 46892-93 (Sept. 17, 2018).

² Laurie Goodman and Jim Parrott, *A Progress Report on Fannie Mae and Freddie Mac’s Move to a Single Security* (Urban Institute, August 2018), p. 5 & Figure 2, available at: https://www.urban.org/sites/default/files/publication/98872/single_security_0.pdf.

such as a pool's weighted average coupon (WAC) because pool characteristics affect prepayment incentives and the Enterprises have material influence over them through buy-up/buy-down ratios,³ pooling decisions on their conduit production, and through discussions with seller/servicers. SIFMA also expressed concerns about whether the monitoring contemplated in the proposed rule would be sufficient to achieve enduring alignment of cash flows to investors. SIFMA commented that focusing on the alignment of prepayment rates alone could mask problems that might arise as economic conditions change, and argued that FHFA should monitor: gross note rate (WAC); loan maturity (Weighted Average Maturity (WAM)); loan age (Weighted Average Loan Age (WALA)); credit score (FICO); loan-to-value (LTV) ratio; loan balance; loan purpose; originator mix; and geographic distribution. SIFMA contended that differences in any of these pool characteristics could drive significant differences in prepayment rates. With respect to WAC, SIFMA suggested three thresholds that should trigger remedial action. The first threshold would be a difference of 10 basis points between the corresponding worst-to-deliver cohorts of Fannie Mae and Freddie Mac TBA-eligible securities; the

³ MBS coupon rates are standardized by every half percentage (3.50%, 4.00%, 4.50%, and so on). The coupon rate on a MBS is the net of: 1) the mortgage rate paid by borrowers, minus; 2) the servicing fee retained by lenders, and minus; 3) the guarantee fee (g-fee) retained by the Enterprises. Since mortgage loan rates tend to be set every one-eighth of a percentage point, this formula often does not end in a net loan rate slotting into a half a percentage point. To match the net rate of the loan to an MBS coupon, lenders may need to adjust the ongoing g-fee retained by the Enterprises to fit the loan into a certain MBS coupon rate. To do so without changing the present value of the g-fee to the Enterprises or the lender, an upfront payment must be made. The lender may increase the ongoing g-fee (a buy-up) to fit the loan into a lower coupon MBS, in which case the Enterprise will make an upfront cash payment to the lender, or decrease the ongoing g-fee to fit the loan into a higher coupon MBS (a buy-down), in which case the lender will make an upfront cash payment to the Enterprise. The amount paid for a buy-up or buy-down will be calculated based on the Enterprises prevailing buy-up and buy-down ratios. The Enterprises quote prices for buy-ups and buy-downs in 100 basis point increments. As an example, a buy-up ratio of 5 would indicate that the price for increase of 100 basis points in the ongoing g-fee or buy-down of 100 basis points of in the ongoing g-fee would cost \$5.00 per \$100 of the loan's principal balance. Thus, for a buy-up or buy-down ratio of 5, 25 basis points of g-fee, and \$100,000 loan, the payment would be \$1,250 (\$5.00 times 0.25 times 1,000).

second would be a difference of 5 basis points for the total production; and the third threshold would be a 75 basis point cap on the difference between the WAC and the coupon on the MBS for any coupon cohort that comprises at least ten percent of an Enterprises' annual production.

FHFA agrees that pool characteristics influence cash flows to TBA-eligible MBS investors, and, therefore, FHFA considers pool characteristics already to be covered by the rule as proposed. FHFA also currently receives and monitors data on pool characteristics and servicer performance, and publishes quarterly *Prepayment Monitoring Reports (PMRs)* that include data on most of the pool characteristics enumerated by SIFMA. FHFA shares the view that the fungibility of UMBS would be enhanced by placing further restrictions on the pooling of individual loan note rates. To do so, FHFA, acting as conservator, has instructed the Enterprises to modify their pooling practices with respect to all fixed-rate products such that the rate on any mortgage in a pool backing a given security be not more than 112.5 basis points greater than the coupon on that security. In addition, the Enterprises are to limit the maximum servicing fee for each loan to no more than 50 basis points; the 50 basis point maximum servicing fee includes the standard 25 basis point servicing fee. Because these changes need to be coordinated with loan originators, they will not take effect until later in 2019. As is the case with other programs, policies, and practices that FHFA has required to be aligned during the conservatorships of the Enterprises, when the final rule becomes effective, the new loan note rate and servicing fee requirements will be a baseline from which any changes would be evaluated. In one of its early *Single Security Updates*, FHFA originally included note rate requirements for single-issuer and multiple-lender UMBS at no less

than 25 basis points to no more than 250 basis points above the security pass-through rate.⁴ FHFA believes the new tighter restrictions will serve to both align prepayment speeds across the TBA-eligible securities issued by the Enterprises and make that alignment more durable irrespective of interest rate changes. FHFA evaluated a number of potential restrictions, including those suggested by SIFMA, and believes this approach will be both effective and easier to operationalize and monitor than the alternatives.

Definition of covered programs, policies, and practices.

Several commenters recommended expanding the list of covered programs, policies, and practices enumerated in the rule. JPMorgan Chase Bank recommended adding mortgage and loss mitigation products and practices, and servicing requirements including foreclosure requirements and timelines, advances, purchases out of pools, and remittances. SIFMA recommended aligning “servicing policies and practices.” PIMCO argued that maximum alignment would “require selling guides for Fannie and Freddie to be uniform.” The Mortgage Bankers Association (MBA) suggested leaving the rule’s list of enumerated programs, policies, and practices open-ended by adding an introductory clause to the effect of “include but are not limited to...” or concluding the definition with language to the effect of “and other factors that FHFA deems appropriate.”

FHFA does not believe that an exhaustive list of servicing or other activities that affect cash flows to investors is necessary because, to the extent the activities affect cash flows, they are covered already. However, the final rule does expand upon the explicitly enumerated programs, policies, and practices covered by the rule in § 1248.6(a). There

⁴ See *An Update on the Structure of the Single Security (May 15, 2015)*, p. A-3, available at: <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Single%20Security%20Update%20final.pdf>.

the final rule reaffirms that programs, policies, and practices that affect cash flows to TBA investors that were aligned under conservatorship must remain aligned under the final rule, subject to the final rule's change management provisions. FHFA agrees that MBA's suggested revisions would reinforce the rule's flexibility and serve the rule's purpose. FHFA modified the definition of covered programs, policies, and practices in § 1248.1 to emphasize that its list of decisions and actions is not exclusive.

Definition of Alignment

Several commenters recommended modifying the definition of alignment to focus on cheapest-to-deliver cohorts. SIFMA reiterated its view that a year/issuer/coupon cohort is too broad. SIFMA stated that FHFA should “at a minimum, implement a year/issuer/coupon standard that excludes specified pools... which could be defined as pools that trade at a premium to the Bloomberg/Barclays MBS index for the definition of alignment.” SIFMA also recommended the use of the “worst quartile of production for each GSE on a rolling three-month basis (comparing three 1-month CPR measures)” and suggested a variable threshold that adjusted for the prepayment environment. Wellington Management Company also suggested “the worst quintile.” PIMCO suggested focusing the definition of alignment on the cheapest-to-deliver decile “to make it more consistent with what drives pricing in the TBA market.” Each of these commenters also suggested that specified pools should be excluded from the calculation. Both SIFMA and Wellington suggested averaging the worst one-month data on a rolling three-month basis. The Community Mortgage Lenders of America (CMLA) suggested using a three-month

moving average of one-month conditional prepayment rates (CPRs)⁵ “to reduce the influence of random and otherwise non-systematic differences between the prepayment rates of two Enterprises and allow for more meaningful monitoring of relative prepayment speeds.”

FHFA agrees that the purposes of the rule will be better served by revising the definition of alignment to include a focus on pools that are least desirable to investors. Accordingly, the final rule broadens the definitions of alignment, misalignment, and material misalignment to include consideration of the fastest paying quartiles of a cohort. The fastest paying quartile of a cohort is defined as the quartile of a cohort that has the fastest prepayment speeds as measured by the three-month CPR and exclusive of specified pools.⁶

To avoid confusion, definitions of both the three-month CPR and specified pools have been added to § 1248.1. FHFA believes that the three-month CPR will capture the same prepayment patterns as a rolling average of one-month CPRs and will reduce operational burden.

Specified pools are defined in the final rule as those with a maximum loan size of \$200,000, a minimum loan-to-value ratio at the time of loan origination of 80 percent, a

⁵ The CPR, also known as the constant prepayment rate, measures prepayments as a percentage of the outstanding principal balance of the pool of loans backing a MBS or cohort of those securities. The CPR is expressed as an annual rate.

⁶ In a falling interest rate environment, faster prepayments are undesirable because MBS prices are often above par and prepayments are received at par. For example, an investor might buy an MBS with a price of \$102 per \$100 of principal outstanding. If the MBS is immediately prepaid, the investor will lose two cents per dollar of principal. In a rising interest rate environment, slower paying MBS will be undesirable as investors will be buying the securities at a discount and prepayments will still be received at par. Similarly, pools that trade on as specified rather than TBA may change with the interest rate environment. Therefore, FHFA has reserved the option in § 1248.5(d) to temporarily or permanently change the definitions of cohort, fastest paying quartile, and specified pools as market conditions or other factors change.

maximum FICO score of 700, where all loans finance investor-owned properties, or where all loans finance properties in the states of New York or Texas or the Commonwealth of Puerto Rico. This definition is similar to but not the same as SIFMA's recommended definition and is based on industry practice.⁷ FHFA believes that SIFMA's recommended definition would be more difficult to align to and unnecessarily increase regulatory burden on the Enterprises because the set of pools that trade at a premium to an MBS can change daily.

FHFA believes that SIFMA's proposal of a variable threshold would create a number of difficulties with respect to administration of the rule. Such difficulties would arise from the fact that at any given time different thresholds would apply to different cohorts. The rule's thresholds, however, may need to be adjusted to respond to changing market conditions on an exigent basis to maintain the liquidity of UMBS without the time that would be required for a typical rulemaking process.⁸ To allow flexibility to respond to changing market practices or conditions, new § 1248.5(d) provides authority for FHFA to temporarily change the definitions of cohort or specified pools with public notice. If the changed definitions are in place for at least six months, FHFA will amend the definitions by *Federal Register* notice with the opportunity for public comment. Paragraph (d) of § 1248.5 provides that a temporarily adjusted definition will remain in effect for six months unless FHFA has already announced a reversion to the previously prevailing definition or initiates a notice and comment rulemaking process to permanently change a definition. In the latter case, the temporarily adjusted definition will remain in place until the conclusion of the notice and comment process. This

⁷ See, for example, Bloomberg, Waterfall Spec Cohorts: Definitions and Syntax.

⁸ See 5 U.S.C. 553(b)(3)(B).

paragraph parallels § 1248.5(c) concerning adjustment of the percentage thresholds in the definitions of align, misalignment, and material misalignment. Paragraph (c) of § 1248.5 has also been amended to clarify what would happen with respect to temporarily adjusted percentages at the end of six months, which was not explicitly stated in the proposed rule.

In conjunction with this change, FHFA has also changed the definition of alignment and misalignment to include a threshold for divergences between the three-month CPRs of the fastest paying quartiles of those cohorts (5 percentage points) in addition to the threshold in the proposed rule for divergences between the three-month CPRs of the corresponding cohorts of the Enterprises' TBA-eligible securities (2 percentage points). Similarly, FHFA has changed the definition of material misalignment to include thresholds for the CPR divergences between the fastest paying quartiles of those cohorts (8 percentage points in the three-month CPR) in addition to the threshold in the proposed rule for CPR divergences between corresponding cohorts of the Enterprises' TBA-eligible securities (3 percentage points in the three-month CPR). As suggested by commenters, FHFA has changed the timeframe of the thresholds from one month to three months. FHFA agrees with commenters that a three-month measure appropriately reduces the influence of random and otherwise non-systematic differences between Enterprise cohorts or fastest paying quartiles.

FHFA set the five and eight percentage point thresholds after analyzing the recent differences in three-month CPRs for the fastest paying quartiles of cohorts of the Enterprises' 30-year TBA-eligible MBS with coupons of 3, 3.5, 4, and 4.5 percent and loan-origination years between 2012 and 2018. Data for many coupon/origination-year cohorts for Enterprise 30-year TBA eligible securities showed that prepayment rates for

the fastest paying quartiles were often, but not universally, well within the 5 percentage point CPR limit. For two cohorts, the eight percentage point limit was frequently exceeded, reflecting prior market interest rate and other conditions as well as differences between the Enterprises in pooling practices. For example, the cohort of securities backed by loans originated in 2016 and paying a 4 percent coupon has exceeded the eight percent threshold 17 times, most recently in November 2018. Given that no attempt had been made during this timeframe at aligning prepayments across the fastest paying cohorts, FHFA believes that the Enterprises will be able to attain alignment of the fastest paying cohorts within the percentage thresholds set in the rule.⁹ Further, FHFA believes that those thresholds, when combined with the thresholds for larger, overall cohorts, should provide more consistency of cash flows to investors and further the purposes of the rule.

Ultimately, the appropriate thresholds are those that provide investors with sufficient confidence that they are willing to settle TBA trades with either Freddie Mac or Fannie Mae UMBS. Once the rule becomes effective, FHFA will apply these thresholds to all cohorts whose combined outstanding unpaid principal balances of securities issued by both Enterprises exceeds \$10 billion, monitor alignment of covered programs, policies, and practices that could affect alignment of fastest paying quartiles and take appropriate actions to understand and remediate misalignments and to support fungibility.

⁹ FHFA has previously published some of the options the Enterprises have for attaining alignment at the cohort level. The same or similar options may apply to aligning the fastest paying quartiles. *See An Update on the Single Security Initiative and the Common Securitization Platform* (December 2017), available at: https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Update-on-the-Single-Security-Initiative-and-the-CSP_December-2017.pdf.

Further, FHFA retains the flexibility to adjust either set of thresholds on a temporary basis or permanently should market conditions warrant.

FHFA understands commenters' concerns about market functioning and the desirability of monitoring absolute performance. However, as discussed below, FHFA continues to believe that relative measures are appropriate, and that incorporating an absolute performance metric is both unnecessary and beyond the scope of the final rule.

Competition

Commenters were split as to the effect of the proposed rule and UMBS initiative on competition. PIMCO commented that “Fannie has a larger market share with originators and more investor-demand ... because Fannie provides better, more tailored customer service and produces bonds with more desirable performance characteristics, not because Fannie has an embedded, structural advantage. Fannie and Freddie are competing on a level playing field, and Fannie is simply winning.” The CMLA opined that consumers would be harmed if attractive and innovative program features cannot be offered to lenders by Fannie Mae and Freddie Mac as an outgrowth of the alignment requirement. Conversely, the National Association of Federally-Insured Credit Unions (NAFCU) commented that “not only will the UMBS create competition within the GSEs with equalized pricing, but the reduced barriers to entry will encourage private financial institutions to again enter the market as they were prior to the financial recession.” MBA commented that “FHFA is correct to focus competition between the Enterprises on factors such as product offerings, technology, and customer service. These are the areas in which competition leads to innovation or better execution, which then produces more efficient markets and lower costs for borrowers. Simply put, the liquidity of their

securities should not be a basis for competition between the Enterprises, and there is no compelling reason for Fannie Mae and Freddie Mac TBA-eligible securities to trade in separate markets.”

Several commenters supported the proposed *de minimis* exception to alignment requirements and affirmed that it would encourage innovation. Many of the same commenters suggested broadening the exception. The CMLA proposed “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 [SIFMA good delivery guidelines] *de minimis* exemption normally utilized for ‘super-conforming’ loans. Under this proposal, 10 percent of any deliverable UMBS pool’s balance might consist of both super-conforming loans and loans issued under new programs subject to FHFA scrutiny.”

FHFA distinguishes between the effects of this rule on competition between the Enterprises as sellers of TBA-eligible MBS to investors and as buyers of TBA-eligible mortgages from originators. The setting of any market standard can be a limit on competition in that market. Such limitations can create economic benefits if they lower the effects of market imperfections such as barriers to entry, asymmetric information, or excessive transactions costs. Where market standards create market efficiencies, they can also create positive spillover effects in related markets. With respect to TBA-eligible securities, standardization has special benefits because it enables the functioning of the TBA market, which not only lowers interest rates for borrowers, but also enables borrowers to lock in interest rates at the time of loan approval, well in advance of closing, and avoid interest-rate risks that individual borrowers are ill-equipped to manage.

Therefore, the optimal balance between competition and standardization may be different in the TBA-eligible mortgage market than in markets for many other goods and services.

FHFA continues to believe that the creation of a uniform, common Enterprise MBS will improve overall execution in the TBA market and benefit participants in related markets. FHFA has consistently iterated its belief that consolidation of the Enterprise TBA markets coupled with general alignment of cash flows from cohorts of UMBS issued by each Enterprise should allow benefits to flow to mortgage borrowers. Such benefits stem from increased competition between the Enterprises to purchase mortgages from mortgage originators. At the same time, general alignment coupled with the *de minimis* exception in § 1248.8 should allow continuing innovation in the origination and servicing markets. To further address concerns about the rule's effect on innovation, FHFA has modified the definition of cohort to incorporate levels exceeding \$10 billion in combined unpaid principal balance of TBA-eligible securities issued by both Enterprises. FHFA believes the final rule appropriately weighs the potential benefits and costs with respect to competition in these markets.

Competitive Behavior

Several commenters (SIFMA, Structured Finance Industry Group (SFIG), and PIMCO) expressed concern that the Enterprises would take actions that, notwithstanding the purposes of the rule's alignment requirements, would be detrimental to security quality. SIFMA emphasized in its comment letter the link between TBA pricing and mortgage rates paid by consumers. SIFMA's reasoning is that actions taken by one Enterprise that are adverse to investors (*e.g.*, actions that accelerate prepayments or incentivize churning of mortgages) will harm the UMBS value of not just the Enterprise

that took the action, but also the value of the competing Enterprise's UMBS, since both Enterprises' UMBS will be deliverable into the same contracts. SFIG and PIMCO expressed similar concerns about a potential decrease in the quality of cheapest-to-deliver collateral. That is, the market forces that would punish an Enterprise for programs, policies, or practices that harm investors would be weakened and actions an Enterprise may not have taken when its securities traded in a separate market may now be more attractive because the damage to the value of both Enterprises' UMBS would be equal given that they both are deliverable into the same TBA contracts. In a countervailing comment, NAFCU commented that the reduced incentives for the Enterprises to create a dominant security could improve the market for certain first-mortgage loans that are currently less traded. Other commenters expressed concern that given the choice between two Enterprise programs, policies, and practices, the Enterprises may align to the less desirable program, policy, or practice from the perspective of investors, lenders, or consumers.

FHFA understands the concerns expressed by these commenters, and, has amended the rule to require FHFA to consider costs and benefits to investors, lenders, and mortgage borrowers as it reviews the Enterprises' covered programs, policies, and practices. Moreover, FHFA believes that strong market incentives exist for the Enterprises to avoid a potential decrease in the quality of cheapest-to-deliver collateral. Such incentives arise from lower market prices for lower quality securities and from the loss of market share associated with a reputation for not consistently acting with consideration toward investors. Lower security prices can both undermine an Enterprise's competitive position in purchasing loans from lenders and affect an

Enterprise's profitability. These incentives survive even with a combined UMBS market because investors can conduct stipulated trades that restrict the issuer, the primary reason that commenter PIMCO gave for expressing skepticism about the success of the UMBS. While the cause PIMCO identified for such stipulated trading – misaligned prepayment speeds – is addressed by this rule, the risk of stipulated trading will continue to be a potent incentive for the Enterprises to maintain the quality of their securities. Potential competition also exists from lenders who choose to retain their mortgage production in their own portfolios and from private securitizations.

Market Adoption

Many commenters noted the importance of a smooth transition to UMBS and several suggested specific ways to improve the likelihood of a smooth transition. SIFMA noted the importance of FHFA finalizing the proposed rule. SFIG and PIMCO highlighted the importance of investors exchanging legacy Freddie Mac securities for UMBS to ensure liquidity in the new market. SFIG recommended that FHFA work with industry stakeholders and market participants to determine whether an inducement fee would be cost-effective in increasing investor exchanges. PIMCO recommended that FHFA consider a temporary and “sufficiently large” inducement fee to incentivize investors to exchange. SFIG also indicated that investors need more information on the tax consequences of the exchange and recommended that the Enterprises’ work with the Internal Revenue Service (IRS) should continue. Comment letters from trade associations representing credit unions, community banks, and home builders emphasized the importance of the secondary mortgage market to their constituencies. The National

Association of Home Builders (NAHB) urged FHFA and the Enterprises to continue and to enhance investor outreach.

FHFA agrees with SIFMA that it is important to finalize the rule in order to facilitate adoption of the UMBS by providing a higher level of market certainty. In addition, while many of the comments received, *e.g.*, requests to participate in advisory committees, are beyond the scope of the proposed rule, FHFA agrees with commenters about the value and critical nature of a smooth transition. FHFA has worked closely with the Enterprises, the Securities and Exchange Commission, and the IRS to create clarity for investors facing the decision to exchange legacy securities for UMBS. FHFA has worked with Freddie Mac to evaluate the desirability of an inducement fee related to that exchange and has made a determination that such a fee would not be necessary at this time. FHFA and the Enterprises have actively engaged in industry outreach to ensure all market participants are aware of and prepared for the transition to UMBS. FHFA's outreach efforts are described in FHFA *Updates on the Single Security Initiative and the Common Securitization Platform*¹⁰ as well as on the Enterprises' Single Security webpages.¹¹

Remedial Actions and Potential Remedies

Several commenters expressed concerns about the remedial actions that would be triggered under the proposed rule. SIFMA recommended that FHFA expand the enumerated menu of potential remedies in the rule to include a broad range of potential actions. SIFMA's list of potential actions FHFA could take or require an Enterprise to

¹⁰ See <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Pages/Securitization-Infrastructure.aspx>.

¹¹ See <http://fanniemae.com/portal/funding-the-market/single-security/index.html> and <http://www.freddiemac.com/mbs/single-security/>.

take includes the termination of a program, policy, or practice, the implementation of a comparable program, policy, or practice by the competing Enterprise, and levying of fines or other penalties, the repurchase of loans at market levels, and clarification of the investor claims process. SFIG requested that FHFA clarify how the required investigations would be conducted, by whom, and what the consequences of those investigations would be, including an explanation of remediation steps and how they would address misalignment or material misalignment. PIMCO focused on the need for a meaningful form of reimbursement for market participants when misalignment occurs. Wellington agreed with SIFMA that FHFA should have greater authority to enforce alignment and address prior misalignment, indicating that the proposed rule appears to limit FHFA authority to consultation and review without reference to enforcement. Wellington indicated that the final rule should describe the potential consequences to the Enterprises for material misalignment. MBA commented that the consequences of misalignment beyond the prescribed thresholds should be sufficiently potent to swiftly remediate divergences.

FHFA agrees that enumerating the potential actions FHFA may take to correct material misalignment in the regulatory text will enhance the likely effectiveness of the rule and has modified § 1248.7 accordingly. New § 1248.7(c) provides that FHFA, at its discretion, may require an Enterprise to take actions to remediate a significant misalignment, including the termination of a program, policy, or practice, or the implementation of a comparable program, policy, or practice by the competing Enterprise. Failure to align covered programs, policies, and practices would be a violation of the regulation (§ 1248.3) and, therefore, grounds for a formal enforcement

action by FHFA. As is the case for failure to comply with any of FHFA's rules, FHFA's enforcement statute, 12 U.S.C. 4636, authorizes FHFA to impose civil money penalties on an Enterprise that fails to align programs, policies, or practices in accordance with the final rule.

FHFA has not incorporated into the rule any requirements for the Enterprises to take investor-facing actions as requested by SIFMA and PIMCO, as the Enterprises already have processes in place for investors to request compensation. Each Enterprise administers its own investor claims and compensation processes.¹²

Monitoring

¹² The current investor claims process of each Enterprise is described below. These processes are generally subject to revision and may evolve, in particular, with changes related to the introduction of UMBS.

At Freddie Mac, claims are usually initiated by investors contacting its Investor Inquiry or Single Family Securitization Department with a question about the performance of one of its mortgage-related securities. For example, such a question could relate to the investor's perception of fast or aberrant prepayment behavior of, or possibly incorrect pooling related to, Freddie Mac mortgage-related securities. Depending on the findings of an internal inquiry and possible consultation with its counsel, Freddie Mac may determine that some form of compensation to the investor would be warranted. If that is the case, Freddie Mac will require that the investor substantiate its ownership of the affected security during the relevant time period. Depending on the nature and materiality of the facts, Freddie Mac may publicly disclose the facts so that other affected investors are aware of the issue and can establish any claims. Alternatively, Freddie Mac may itself discover the factual situation, which, under certain circumstances, may warrant compensation to certain affected mortgage-related securities holders. In such circumstances, Freddie Mac may publicly disclose the facts relating to the issue so that affected investors can contact Freddie Mac to establish a claim to compensation.

At Fannie Mae, a claims process is available to investors who believe they may have been financially harmed due to a unique incident or potential disclosure issue on a Fannie Mae-issued security. As part of the investor's submission, the investor must include the reason for the claim, evidence of ownership of the security, evidence of the price paid for the security, and calculations of the alleged damages and supporting analytics. Fannie Mae reviews the submission and determines if the circumstances were a result of normal business activity or instead were caused by an error. If the claim is determined to be a result of normal business activity, Fannie Mae will contact the investor and inform him or her of the findings. If the event is determined to be a result of an error, Fannie Mae will confirm ownership of the security at the time the event occurred, perform an independent assessment of the value of the claim, and contact the investor to determine an appropriate resolution. Once the investor and Fannie Mae have agreed on a resolution, both parties will sign an agreement form and Fannie Mae will execute the agreed upon resolution.

In addition to SIFMA's comments on the desirability of monitoring WAC differences, SIFMA also commented that gaps in servicer performance between the Enterprises need to be monitored and investigated, and that FHFA should monitor overall performance in addition to relative performance. FHFA currently receives and monitors data that include information on servicer performance, and publishes that information in quarterly *PMRs*. FHFA understands the desirability of monitoring absolute performance of Enterprise TBA-eligible securities, but believes incorporating such a requirement into the final rule is both unnecessary and beyond the rule's scope. The CMLA commented that FHFA should monitor the prevalence of stipulated trades¹³ in the TBA market in conjunction with its monitoring of prepayment speeds. FHFA believes that a requirement to undertake such monitoring is both unnecessary given current practices and beyond the scope of the final rule. FHFA monitors TBA activity using data collected by and obtained from the Financial Industry Regulatory Authority (FINRA).¹⁴ That data, which must be reported by both broker-dealers and automated trading systems subject to FINRA regulation, contains information on stipulated trading activity. The Enterprises also monitor the TBA market.

In its comment letter, NAHB called on FHFA to institute a formal process to review ongoing prepayment behavior of UMBS. Echoing an earlier comment received from SIFMA,¹⁵ NAHB suggested that such a process might take the form of a committee

¹³ Stipulated trades are TBA trades in which the buyer stipulates additional characteristics that pools delivered by the seller must meet in order to settle the trade.

¹⁴ FINRA developed the Trade Reporting and Compliance Engine (TRACE) system in 2002 to increase transparency in the bond market by requiring FINRA-registered broker-dealers to report data on the size and price of covered transactions. FINRA extended reporting requirements to MBS transactions in May 2011.

¹⁵ See <https://www.sifma.org/wp-content/uploads/2018/07/Single-Security-%E2%80%93-Priority-Issues-to-be-resolved-before-launch.pdf>.

that meets quarterly or semi-annually and should include executives from FHFA, Fannie Mae, Freddie Mac, and select industry participants. NAFCU encouraged FHFA to include credit union professionals in the Single Security/Common Securitization Platform Industry Advisory Group.

FHFA understands the interest in transparency underlying these comments. FHFA currently is considering options to improve and maintain transparency with market participants, but does not believe that the final rule is the proper vehicle to institute a committee structure or establish a fixed list of participants.

Transparency

NAHB and MBA made a number of recommendations with respect to transparency. NAHB recommended that a process should be in place to notify market participants if a program is expected to affect prepayment speeds. NAHB argued that such transparency would assure market participants that if issues arise that appear to cause prepayment speed differences they will be addressed quickly. NAHB also recommended that FHFA establish new product implementation guidelines that emphasize transparency and include an opportunity for feedback by market participants when a product or program has the potential to impact prepayment speeds. As discussed previously, NAHB also recommended that FHFA implement a formal process to review ongoing prepayment behavior of the UMBS.

Currently, significant changes to Enterprise programs, policies, and practices are announced through their websites, usually in advance of their effective dates to allow sellers, servicers, and other market participants to make any necessary adjustments related to such changes, and FHFA believes the current practices are adequate to address

NAHB's concern. The development of new product implementation guidelines, however, is beyond the scope of the final rule.

The MBA comment letter contained two specific recommendations to increase transparency in FHFA oversight. First, MBA recommended that FHFA provide public notice (but not request comment) at the time of any adjustments to the thresholds defining acceptable divergences in prepayment speeds per § 1248.5. Second, MBA recommended that the final rule require FHFA to publish quarterly *PMRs* similar to those that it currently publishes on a voluntary basis.

FHFA is committed to transparency in its regulatory activities. FHFA intends to publicly announce any changes to § 1248.5 thresholds at the time of any temporary or permanent changes. FHFA has revised § 1248.5(c) to require a contemporaneous public announcement of any temporary change to the thresholds. FHFA also intends to continue to produce quarterly *PMRs*, but FHFA believes that incorporating a requirement that it continue to publish periodic *PMRs* is beyond the scope of the final rule, which is focused primarily on the continued alignment of Enterprise programs, policies, and practices that foreseeably affect cash flows to investors.

Potential Adverse Effects

Several commenters focused on potential adverse effects of the move to UMBS. The CMLA noted that FHFA might 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. FHFA believes the conservatorship issue is beyond the scope of the final rule. Some commenters (PIMCO, CMLA) expressed

concern that stipulated trades could fragment the TBA market and undermine the potential liquidity gains from market consolidation. Some commenters (CMLA, Independent Community Bankers of America (ICBA)) also expressed concern that the alignment or remediation required under the rule could curtail or prevent the development of programs, policies, and practices that were beneficial to lenders and consumers. ICBA questioned whether standardizing remittance cash flows would benefit homeowners, arguing that any benefit would accrue mostly to larger servicers and that any benefit to MBS investors would be bid into the price of the securities.

FHFA recognizes the concerns about market fragmentation; in fact, they are an important impetus for promulgating the final rule. FHFA also shares concerns about inhibiting innovations that benefit consumers and other market participants. Section 1248.8 provides for a *de minimis* exception to foster such innovations. Sections 1248.3 and 1248.7 also have been amended to require the Enterprises and FHFA to consider both the effect of policies, programs, and practices on the pricing of TBA-eligible securities and the costs and benefits to investors, lenders, and mortgage borrowers.

III. Regulatory Impact

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), FHFA may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. FHFA has reviewed this final rule and determined that it does not contain any new, or revise any existing, collections of information.

B. Regulatory Flexibility Act

The General Counsel of FHFA certifies that this final rule will not have a significant economic impact on a substantial number of small entities because the regulation applies only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

C. Congressional Review Act

In accordance with the Congressional Review Act,¹⁶ FHFA has determined that this final rule is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the OMB.

IV. Statutory Authority

A. Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act)

The Safety and Soundness Act provides that a principal duty of the FHFA Director is “to ensure that...the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets.”¹⁷ The Safety and Soundness Act also provides that the FHFA Director “shall have general regulatory authority over each regulated entity and the Office of Finance, and shall exercise such general regulatory authority, including such duties and authorities set forth under 12 U.S.C. 4513, to ensure that the purposes of [the] Act, the authorizing statutes [including the Federal National Mortgage Association Charter Act (*Charter Act*); and the

¹⁶ See 5 U.S.C. 804(2).

¹⁷ 12 U.S.C. 4513(a)(1)(B)(ii).

Federal Home Loan Mortgage Corporation Act (*Corporation Act*)], and any other applicable law are carried out.”¹⁸

B. Fannie Mae Charter Act

Among other purposes, the *Charter Act* requires Fannie Mae to “promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by *increasing the liquidity of mortgage investments and improving the distribution of investment capital* available for residential mortgage financing.”¹⁹

C. Freddie Mac Corporation Act

Similarly, the *Corporation Act* requires Freddie Mac “to promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by *increasing the liquidity of mortgage investments and improving the distribution of investment capital* available for residential mortgage financing.”²⁰

As more fully explained in the NPR, FHFA has determined that the UMBS will enhance liquidity in national mortgage markets and that general alignment of Enterprise programs, policies, and practices that affect cash flows to TBA-eligible MBS investors is necessary for the UMBS to achieve market acceptance. Moreover, FHFA has determined that the final rule is authorized both under the FHFA Director’s duty to ensure that the operations and activities of Fannie Mae and Freddie Mac foster liquid, efficient, competitive, and resilient national housing finance markets, and the FHFA Director’s duty to ensure that Fannie Mae and Freddie Mac fulfill the purposes of the *Charter Act* and *Corporation Act*, which include increasing the liquidity of mortgage investments.

¹⁸ 12 U.S.C. 4511(b)(2).

¹⁹ 12 U.S.C. 1716(4) (emphasis added).

²⁰ Section 301(b)(4) (12 U.S.C. 1451 note) (emphasis added).

List of Subjects in 12 CFR Part 1248

Credit, Government securities, Investments, Mortgages, Recordkeeping and reporting Requirements, Securities.

Accordingly, for the reasons stated in the **SUPPLEMENTARY INFORMATION**, and under the authority of 12 U.S.C. 4526, FHFA amends subchapter C of chapter XII of Title 12 of the Code of Federal Regulations by adding new part 1248 to read as follows:

PART 1248—UNIFORM MORTGAGE-BACKED SECURITIES

Sec.

- 1248.1 Definitions.
- 1248.2 Purpose.
- 1248.3 General alignment.
- 1248.4 Enterprise consultation.
- 1248.5 Misalignment.
- 1248.6 Covered programs, policies, and practices.
- 1248.7 Remedial actions.
- 1248.8 *De minimis* exception.

Authority: 12 U.S.C. 1451 note; 1716; 4511; and 4526.

§ 1248.1 Definitions.

The definitions below are used to define terms for purposes of this part:

Align or alignment means to cause to be sufficiently similar, or have sufficient similarity, as to produce a conditional prepayment rate (CPR) divergence of less than 2 percentage points in the three-month CPR for a cohort, and less than 5 percentage points in the three-month CPR for a the fastest paying quartile of a cohort (or less than the prevailing percentage thresholds for alignment set by FHFA, per § 1248.5(c)).

Cohort means all TBA-eligible securities with the same coupon, maturity, and loan-origination year where the combined unpaid principal balance of such securities issued by both Enterprises exceeds \$10 billion.

Conditional Prepayment Rate or CPR, also known as the constant prepayment rate, means the rate at which investors receive outstanding principal in advance of scheduled principal payments. This includes receipts of principal that result from borrower prepayments and for any other reason. The CPR is expressed as a compound annual rate.

Covered Programs, Policies, or Practices means management decisions or actions that have reasonably foreseeable effects on cash flows to TBA-eligible MBS investors (e.g., effects that result from prepayment rates and the circumstances under which mortgage loans are removed from MBS). These generally include management decisions or actions about: single-family guarantee fees; loan level price adjustments and delivery fee portions of single-family guarantee fees; the spread between the note rate on the mortgage and the pass-through coupon on the TBA-eligible MBS; eligibility standards for sellers and servicers; financial and operational standards for private mortgage insurers; requirements related to the servicing of distressed loans that collateralize TBA-eligible securities; streamlined modification and refinance programs; removal of mortgage loans from securities; servicer compensation; proposals that could materially change the credit risk profile of the single-family mortgages securitized by an Enterprise; selling guide requirements for documenting creditworthiness, ability to repay, and adherence to collateral standards; refinances of HARP-eligible loans; contract provisions under which certain sellers commit to sell to an Enterprise a minimum share of

the mortgage loans they originate that are eligible for sale to the Enterprises; loan modification offerings; loss mitigation practices during disasters; alternatives to repurchase for representation and warranty violations; and other actions.

Fastest paying quartile of a cohort means the quartile of a cohort that has the fastest prepayment speeds as measured by the three-month CPR. The quartiles shall be determined by ranking outstanding TBA-eligible securities with the same coupon, maturity, and loan-origination year by the three-month CPR, excluding *specified pools*, and dividing each cohort into four parts such that the total unpaid principal balance of the pools included in each part is equal.

Material misalignment means divergence of at least 3 percentage points in the three-month CPR for a cohort or at least 8 percentage points in the three-month CPR for a fastest paying quartile of a cohort, or a prolonged misalignment (as determined by FHFA), or divergence greater than either of the corresponding prevailing percentage thresholds set by FHFA, per § 1248.5(c).

Misalign or misalignment means to diverge by, or a divergence of, 2 percentage points or more, in the three-month CPR for a cohort or 5 percentage points or more, in the three-month CPR for a fastest paying quartile of a cohort (or more than either of the corresponding prevailing percentage thresholds set by FHFA, per § 1248.5(c)).

Mortgage-backed security or MBS means securities collateralized by a pool or pools of single-family mortgages.

Specified pools means pools of mortgages backing TBA-eligible MBS that have a maximum loan size of \$200,000, a minimum loan-to-value ratio at the time of loan origination of 80 percent, or a maximum FICO score of 700, or where all mortgages in

the pool finance investor-owned properties or properties in the states of New York or Texas or the Commonwealth of Puerto Rico.

Supers means single-class re-securitizations of UMBS.

Three-month conditional prepayment rate (CPR3) means the annualized measure of prepayments for a three month interval calculated as follows:

$CPR3_t = 1 - ((1 - SMM_{t-2}) * (1 - SMM_{t-1}) * (1 - SMM_t))^4$, where t indicates the month and SMM is the single month mortality rate, which equals $(PMT_t - I_t - P_t) / (UPB_t - P_t)$, where PMT_t is the actual payments received in the month, I_t is the scheduled payments of interest, P_t is the scheduled payments of principal, and UPB_t is the beginning unpaid principal balance.

To-Be-Announced Eligible Mortgage-Backed Security (TBA-Eligible MBS) means Enterprise MBS (including Freddie Mac Participation Certificates, Giants, MBS, UMBS, and Supers; and Fannie Mae MBS, Megas, UMBS, and Supers) that meet criteria such that the market considers them sufficiently fungible to be forward traded in the TBA market.

Uniform Mortgage Backed Security or UMBS means a single-class MBS backed by fixed-rate mortgage loans on one-to-four unit (single-family) properties issued by either Enterprise which has the same characteristics (such as payment delay, pooling prefixes, and minimum pool submission amounts) regardless of which Enterprise is the issuer.

§ 1248.2 Purpose.

The purpose of this part is to:

(a) Enhance liquidity in the MBS marketplace, and to that end, enable adoption of the UMBS, by achieving sufficient similarity of cash flows on cohorts of TBA-eligible MBS such that investors will accept delivery of UMBS from either issuer in settlement of trades on the TBA market.

(b) Provide transparency and durability into the process for creating alignment.

§ 1248.3 General alignment.

Each Enterprise's covered programs, policies, and practices must align with the other Enterprise's covered programs, policies, and practices.

When aligning covered programs, policies, and practices, the Enterprises must consider:

(1) The effect of the alignment on TBA-eligible securities' pricing and particularly on the prepayment speeds of mortgages underlying TBA-eligible MBS.

(2) Options that provide the greatest benefit for investors, lenders, and mortgage borrowers.

§ 1248.4 Enterprise consultation.

When and in the manner instructed by FHFA, the Enterprises shall consult with each other on any issues, including changes to covered programs, policies, and practices that potentially or actually cause cash flows to TBA-eligible MBS investors to misalign. The Enterprises shall report to FHFA on the results of any such consultation.

§ 1248.5 Misalignment.

(a) The Enterprises must report any misalignment to FHFA.

(b) The Enterprises must submit, in a timely manner, a written report to FHFA on any material misalignment describing, at a minimum, the likely cause of material misalignment and the Enterprises' plan to address the material misalignment.

(c) FHFA will *temporarily* adjust the percentages in the definitions of align, misalignment, and material misalignment, if FHFA determines that market conditions dictate that an adjustment is appropriate.

(1) In adjusting the percentages, FHFA will consider:

(i) The prevailing level and volatility of interest rates;

(ii) The level of credit risk embedded in the Enterprises' TBA-eligible MBS; and

(iii) Such other factors as FHFA may, in consultation with the Enterprises,

determine to be appropriate to promote market confidence in the alignment of cash flows to TBA-eligible MBS investors and to foster the efficiency and liquidity of the secondary mortgage market.

(2) FHFA will publicly announce any temporary adjustment to the percentages in the definition of align, misalignment, and material misalignment in a timely manner.

(3) If adjusted percentages remain in effect for six months or more, FHFA will amend this part's definitions by *Federal Register* Notice, with opportunity for public comment.

(4) Temporarily adjusted percentages will remain in effect until six months after the date on which FHFA announced the temporary adjustment unless within six months of that date --

(i) FHFA announces a reversion to the previously prevailing percentages; or

(ii) FHFA initiates the notice and comment process, in which case the temporary percentages will remain in effect until the conclusion of that process.

(d) FHFA will *temporarily* adjust the definitions of cohort, fastest paying quartile of a cohort, and specified pools, if FHFA determines that changes in market practices or conditions dictate that an adjustment is appropriate.

(1) In adjusting those definitions, FHFA will consider:

(i) Changes in prevailing market practices related to the identification of specified pools;

(ii) The prevailing interest rates environment;

(iii) Observed relationships between pool characteristics and prepayment behavior of the Enterprises' TBA-eligible MBS; and

(iv) Such other factors as FHFA may, in consultation with the Enterprises, determine to be appropriate to promote market confidence in the alignment of cash flows to TBA-eligible MBS investors and to foster the efficiency and liquidity of the secondary mortgage market.

(2) FHFA will publicly announce any temporary adjustment to the definitions of cohort and specified pools in a timely manner.

(3) If adjusted definitions remain in effect for six months or more, FHFA will amend this part's definitions by *Federal Register* Notice, with opportunity for public comment.

(4) Temporarily adjusted definitions will remain in place until six months after the date on which FHFA announced the temporary adjustment unless within six months of that date --

- (i) FHFA announces a reversion to the previously prevailing definitions; or
- (ii) FHFA initiates the notice and comment process, in which case the temporary definitions will remain in effect until the conclusion of that process.

§ 1248.6 Covered programs, policies, and practices.

(a) *Enterprise Change Management Processes.* Each Enterprise must establish and maintain an Enterprise-wide governance process to ensure that any proposed changes to covered programs, policies, and practices that may cause misalignment are identified, reviewed, escalated, and submitted, in writing, to FHFA for review and approval in a timely manner, including proposed changes to covered programs, policies, and practices that were previously aligned at the direction of FHFA as conservator.

(1) Submissions to FHFA must include projections for prepayment rates and for removals of delinquent loans under a range of interest rate environments and assumptions concerning borrower defaults.

(2) Submissions to FHFA must include an analysis of the impact on borrowers and impact on the fastest paying quartile of each cohort.

(3) Submissions to FHFA must include an analysis of identified risks and may include potential mitigating actions.

(b) *Enterprise Monitoring.* Any changes to covered programs, policies, and practices that an Enterprise reasonably should identify as having been a likely cause of an unanticipated divergence between Enterprises in the three-month CPR of the same cohort shall be reported promptly to FHFA in writing.

(c) *FHFA Monitoring.* FHFA will monitor changes to covered programs, policies, and practices for effects on cash flows to TBA-eligible MBS investors.

§ 1248.7 Remedial actions.

(a) Based on its review of reports submitted by the Enterprises and reports issued by independent parties, if FHFA determines that there is misalignment, or the risk of misalignment, FHFA may:

(1) Require an Enterprise to undertake additional analysis, monitoring, or reporting to further the purposes of this part.

(2) Require an Enterprise to change covered programs, policies, and practices that FHFA determines conflict with the purposes of this part.

(b) To address material misalignment, FHFA may require additional and expedient Enterprise actions based on:

(1) Consultation with the Enterprises regarding the cause of the material misalignment;

(2) Review of Enterprise compliance with previously agreed upon or FHFA-required actions; and

(3) Review of the effectiveness of such actions to determine whether they are achieving the purpose of this part.

(c) Depending on the severity and cause of any material misalignment, FHFA, in its discretion, may:

(1) Require an Enterprise to terminate a program, policy, or practice; or

(2) Require the competing Enterprise to implement a comparable program, policy, or practice.

(d) When requiring an Enterprise to terminate a program, policy, or practice, or implement a comparable program, policy, or practice, FHFA will consider:

(1) The effect on TBA-eligible securities pricing and particularly on the prepayment speeds of mortgages underlying TBA-eligible MBS; and

(2) The costs borne by and the benefits likely to accrue to investors, lenders, and mortgage borrowers.

§ 1248.8 *De minimis* exception.

FHFA may exclude from the requirements of this part covered programs, policies, or practices of an Enterprise as long as those covered programs, policies, or practices do not affect more than \$5 billion in unpaid principal balance of that Enterprises' TBA-eligible MBS.

/s/
Joseph M. Otting,
Acting Director, Federal Housing Finance Agency.

2/28/2019
Date