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Federal Housing Finance Agency
Office of Strategic Initiatives
400 7th Street, NW
Washington, DC 20024
Email: SecuritizationInfrastructure@fhfa.gov

On October 4, 2012, the Federal Housing Finance Agency released *Building a New Infrastructure for the Secondary Mortgage Market* (the Proposal), a white paper which proposed a new mortgage securitization platform. The undersigned groups, representing mortgage and commercial banks, and financial companies of all sizes, appreciate the opportunity to comment on the Proposal. We applaud Acting-Director DeMarco and the FHFA as a whole for boldly acting in the face of uncertain market conditions. Nevertheless, the Proposal raises issues that could drastically impact the mortgage finance market and could have an impact far beyond the immediate and near term needs of the GSEs and the mortgage markets. We submit the following comments regarding these concerns.

Background

The FHFA Proposal describes a framework for a new securitization platform (Platform) that could utilize a standard Pooling and Servicing Agreement (PSA). This PSA would be developed to incorporate by reference standardized documents developed jointly by Fannie Mae and Freddie Mac.

The white paper has two stated goals: 1) to replace the outmoded proprietary infrastructures of the GSEs with a common and more efficient model and 2) to establish a framework that is consistent with multiple states of housing finance reform, including greater participation of private capital in assuming credit risk.

FHFA officials stated their belief that Fannie Mae's and Freddie Mac's legacy software must be upgraded in order to continue to effectively and efficiently service existing and future GSE MBS. FHFA has sought efficiencies by pursuing a single platform that can be used by both GSEs. Additionally, FHFA is looking to maximize the utility of the project by building it in a flexible manner to start migrating more of the credit risk to private enterprises with the eventuality that the software and infrastructure could serve as a utility for private label securities.

Finally, the Proposal announces that FHFA and the GSEs plan to develop a model PSA that could be used by the private label MBS market as part of the Platform. The PSA would use selected features from GSE, Ginnie Mae and private sector experience. The Proposal suggests that the model PSA should be shorter, more flexible, and would utilize selling and servicing standards similar to those used by the GSEs. To this end, it is envisioned that the PSA would incorporate by reference the GSEs' Selling Guide, Servicing Guide (collectively, seller/servicer guides) and Master Custodial Agreement.[1]

Comments

We view the Proposal as introducing two related yet materially different projects. The first (Phase 1) is the technological upgrade to the current GSE business model, an upgrade the undersigned organizations fully support. The second phase (Phase 2) is the expanded functionality and standardization, evidenced by the model PSA, and standardized Master Servicing and Bond Administration functions. The undersigned have several concerns about this second phase, and urge FHFA to proceed cautiously, seeking significant industry input. Phase 2 has the potential to alter the industry's historic business model and should not be undertaken lightly. Ultimately it will be necessary for Congressional direction as to the future of governmental involvement in the secondary market before many decisions can be made or for Phase 2 to be implemented.

<u>We Applaud FHFA's Desire to Upgrade Technology</u>

As stated above, we agree with the need to update Fannie Mae's and Freddie Mac's legacy systems and software, and applaud the choice to implement the change via a single platform.[2] The undersigned also agree with the proposed platform design principles:

- **Open architecture** that could leverage existing standard data sets
- **Functional modularity** whereby internal components communicate via standard interfaces to ensure new modules can be plugged in with minimal impact
- **Scalability** to accommodate growth demands and increased throughput
- **Data transparency and Standardization** using MISMO industry standards

FHFA should prioritize the technological upgrades necessary for making today's processes more efficient and effective for sellers, servicers, and investors. FHFA should also take into consideration the need for market stability and should ensure uninterrupted access to the secondary market during the platform's development, testing, and implementation. The additional functionality upgrades and standardized features that comprise Phase 2 should be secondary priorities not undertaken at this time.

<u>FHFA Should Reserve Changes to the Marketplace and the Role of the GSEs to Congress</u>

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[1] FHFA, *Building a New Infrastructure for the Secondary Mortgage Market*, October 4, 2012, page 27.
[2] As opposed to developing separate systems for each GSE.

The Proposal contemplates several functional upgrades that alter the mortgage finance market as it currently operates, including standardizing a PSA and incorporating into it a unified seller/servicer guide, and adding master bond administration and master servicing functions. These matters are most properly addressed by Congress in the form of legislation, a point on which FHFA and the undersigned agree.

Similarly, there are many questions that should be addressed by Congress before considering “Phase 2” initiatives. For example, we are concerned that the Proposal leaves unstated significant governance and regulatory issues, such as:

- Who would own the Platform?
- Who would be responsible for its development, governance, and day-to-day operations?
- Who would regulate the Platform and securities issued through it? Similarly, who would make and approve changes to seller servicer guides that would be incorporated by reference in the PSA?

The answers to these questions will significantly impact the future of the mortgage secondary market, and as a result we believe they are within Congress’ purview to answer.

Additionally, while a security incorporating some of the factors contained in the Proposal would make a valuable benchmark, its use should not be mandatory. Moreover, the incorporation of the Seller/Servicer Guide through the PSA should be limited:

- o Changes should not be allowed to apply retroactively
- o There should be a formal notice and comment-like process for the industry to provide input on any proposed changes

The Proposal also leaves unstated the relationship between the proposed Platform and FHFA and the SEC, particularly concerning Regulation AB (Reg AB). This is noteworthy because the GSEs are currently non-compliant with the Proposed Amendment to Reg AB. Congress will need to determine if FHFA should continue as regulator of the Platform, whether the Platform is envisioned as a self-governed entity, and whether the SEC will have ultimate jurisdiction.

<u>Other Concerns</u>

FHFA should also consider the implications on the market given the current volume sold to the GSEs, particularly in light of recent volume limitations and net worth requirements imposed on smaller lenders. The Platform should not have the effect of spurring increased consolidation, and the GSEs and FHFA should make ensuring liquidity to smaller lenders a top priority.

Conclusion

The undersigned applaud the bold effort by FHFA to improve the current mortgage finance model through technological innovation at the GSEs. However, significant concerns remain that caution against moving forward on Phase 2 initiatives until the critical, underlying issues can be fully considered by the Congress. FHFA should continue its industry outreach, and the undersigned remain committed to facilitating the return of private capital to an efficient and diverse home finance market and to working with all parties to that end. We will, either individually, or as a group, provide additional comments as the process moves forward.

Sincerely,

American Bankers Association
Consumer Mortgage Coalition
Housing Policy Council of The Financial Services Roundtable
Independent Community Bankers of America
Mortgage Bankers Association