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(2) For purposes of paragraph (b)(1) of this section, a “deficiency” is an aspect of an Enterprise’s resolution plan that FHFA determines presents a weakness that, individually or in conjunction with other aspects, could undermine the feasibility of the Enterprise’s resolution plan. A “shortcoming” is a weakness or gap that raises questions about the feasibility of an Enterprise’s resolution plan, but does not rise to the level of a deficiency. If a shortcoming is not satisfactorily explained or addressed before or in the submission of the Enterprise’s next resolution plan, it may be found to be a deficiency in the Enterprise’s next resolution plan. FHFA may identify an aspect of an Enterprise’s resolution plan as a deficiency even if such aspect was not identified as a shortcoming in an earlier resolution plan submission.

(c) *Resubmission of a resolution plan.* Within 90 days of receiving a notice of deficiency, or such shorter or longer period as FHFA may establish by written notice to the Enterprise, an Enterprise shall submit a revised resolution plan to FHFA that addresses all deficiencies identified by FHFA, and that discusses in detail:

(1) Revisions to the plan made by the Enterprise to address the identified deficiencies;

(2) Any changes to the Enterprise’s business operations and corporate structure that the Enterprise proposes to undertake to address a deficiency (including a timeline for completing such changes); and

(3) Why the Enterprise believes that the revised resolution plan is feasible and would facilitate a rapid and orderly resolution by FHFA as receiver.

§ 1242.8 No limiting effect or private right of action.

(a) *No limiting effect on resolution proceedings.* A resolution plan submitted pursuant to this part shall not have any binding effect on FHFA when appointed as conservator or receiver under 12 U.S.C. 4617.

(b) *No private right of action.* Nothing in this part creates or is intended to create a private right of action based on a resolution plan prepared or submitted under this part or based on any

action taken by FHFA with respect to any resolution plan submitted under this part.

PART 1248—UNIFORM MORTGAGE-BACKED SECURITIES

Sec.

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

SOURCE: 84 FR 7799, Mar. 5, 2019, unless otherwise noted.

§ 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 refinancing 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:

$$\text{CPR}_3 = 1 - ((1 - \text{SMM}_{t-2}) * (1 - \text{SMM}_{t-1}) * (1 - \text{SMM}_t))^4,$$

where t indicates the month and SMM is the single month mortality rate, which equals $(\text{PMT}_t - I_t - P_t) / (\text{UPB}_t - P_t)$, 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)

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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.

(a) 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.

(b) [Reserved]

§ 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 misalign-

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ment, 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

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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.

PART 1249—BOOK-ENTRY PROCEDURES

Sec.

1249.10 Definitions.

1249.11 Maintenance of Enterprise Securities.

1249.12 Law governing rights and obligations of United States, Federal Reserve Banks, and Enterprises; rights of any person against United States, Federal Reserve Banks, and Enterprises; law governing other interests.

1249.13 Creation of Participant's Security Entitlement; security interests.

1249.14 Obligations of Enterprises; no adverse claims.

1249.15 Authority of Federal Reserve Banks.

1249.16 Withdrawal of Eligible Book-entry Enterprise Securities for conversion to definitive form.

1249.17 Waiver of regulations.

1249.18 Liability of Enterprises and Federal Reserve Banks.

1249.19 Additional provisions.

AUTHORITY: 12 U.S.C. 4501, 4502, 4511, 4513, 4526.

SOURCE: 75 FR 55928, Sept. 14, 2010, unless otherwise noted.

§ 1249.10 Definitions.

(a) *General.* Unless the context requires otherwise, terms used in this part that are not defined in this part, have the meanings as set forth in 31 CFR 357.2 and in 12 CFR 1282.1. Definitions and terms used in 31 CFR part 357 should read as though modified to effectuate their application to the Enterprises.

(b) *Other terms.* As used in this part, the term:

Book-entry Enterprise Security means an Enterprise Security issued or maintained in the Book-entry System.

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Book-entry Enterprise Security also means the separate interest and principal components of a Book-entry Enterprise Security if such security has been designated by the Enterprise as eligible for division into such components and the components are maintained separately on the books of one or more Federal Reserve Banks.

Book-entry System means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the Enterprises, on which Book-entry Enterprise Securities are issued, recorded, transferred and maintained in book-entry form.

Definitive Enterprise Security means an Enterprise Security in engraved or printed form, or that is otherwise represented by a certificate.

Eligible Book-entry Enterprise Security means a Book-entry Enterprise Security issued or maintained in the Book-entry System which by the terms of its Securities Documentation is eligible to be converted from book-entry form into definitive form.

Enterprise Security means any security or obligation of Fannie Mae or Freddie Mac issued under its respective Charter Act in the form of a Definitive Enterprise Security or a Book-entry Enterprise Security.

Entitlement Holder means a Person or an Enterprise to whose account an interest in a Book-entry Enterprise Security is credited on the records of a Securities Intermediary.

Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains Book-entry Securities accounts (including Book-entry Enterprise Securities) and transfers Book-entry Securities (including Book-entry Enterprise Securities).

Participant means a Person or Enterprise that maintains a Participant's Securities Account with a Federal Reserve Bank.

Person, as used in this part, means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not