

## Federal Housing Finance Agency

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the over-the-counter derivative contract at termination (standard International Swaps and Derivatives Association, Inc. language relative to early termination pricing and methodology may be used to satisfy this requirement); and

(iv) A requirement that the Bank's consent be obtained prior to the transfer of an agreement or contract by a counterparty.

### PART 1268—ACQUIRED MEMBER ASSETS

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#### § 1268.1 Definitions.

As used in this part:

*Affiliate* means any business entity that controls, is controlled by, or is under common control with, a member.

*AMA investment grade* means a determination made by the Bank with respect to an asset or pool, based on documented analysis, including consideration of applicable insurance, credit enhancements, and other sources for repayment on the asset or pool, that the Bank has a high degree of confidence that it will be paid principal and interest in all material respects, even under reasonably likely adverse changes to expected economic conditions.

*AMA product* means a structure that is defined by a specific set of terms and conditions that comply with this part 1268 and that is established by a Bank for purposes of governing the Bank's purchase of AMA-eligible loans.

*AMA program* means a Bank-established program to buy mortgage loans that meet the requirements of this

part, which may comprise multiple AMA products.

*Expected losses* means the loss on the asset or pool given the expected future economic and market conditions in the model or methodology used by the Bank under §1268.5 and applicable to an AMA product.

*Participating financial institution* means a member or housing associate of a Bank that is authorized to sell, credit enhance, or service mortgage loans to or for its own Bank through an AMA program, or a member or housing associate of another Bank that has been authorized to sell, credit enhance, or service mortgage loans to or for the other Bank pursuant to an agreement between the Bank acquiring the AMA product and the Bank of which the selling institution is a member or housing associate.

*Pool* means a group of loans acquired under one or more loan funding commitments, contractual agreements, or similar arrangements.

*Qualified insurer* means an insurer that a Bank approves in accordance with §1268.5(e)(1) to provide any form of mortgage insurance coverage on assets and pools purchased under an AMA program.

*Residential real property* has the meaning set forth in §1266.1 of this chapter.

#### § 1268.2 Authorization for acquired member assets.

(a) *General.* Each Bank is authorized to invest in assets that qualify as AMA, subject to the requirements of this part and part 1272 of this chapter.

(b) *Grandfathered transactions.* Notwithstanding paragraph (a), a Bank may continue to hold as AMA assets that were previously authorized by the Federal Housing Finance Board or FHFA for purchase as AMA, provided that the assets were purchased, and continue to be held, in compliance with that authorization.

#### § 1268.3 Asset requirement.

Assets that qualify as AMA shall be limited to the following:

(a) Whole loans that are eligible to secure advances under §1266.7(a)(1)(i),

(a)(2)(ii), (a)(4), or (b)(1) of this chapter, excluding:

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(1) Single-family mortgage loans where the loan amount exceeds the limits established pursuant to 12 U.S.C. 1717(b)(2), unless the loan is guaranteed or insured by an agency or department of the U.S. government, in which case the limits in 12 U.S.C. 1717(b)(2) do not apply; and

(2) Loans made to an entity, or secured by property, not located in a state;

(b) Whole loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property under applicable state law;

(c) State and local housing finance agency bonds; or

(d) Certificates representing interests in whole loans if:

(1) The loans qualify as AMA under paragraphs (a) or (b) of this section and meet the nexus requirement of §1268.4; and

(2) The certificates:

(i) Meet the credit enhancement requirements of §1268.5;

(ii) Are issued pursuant to an agreement between the Bank and a participating financial institution to share risks consistent with the requirements of this part; and

(iii) Are acquired substantially by the initiating Bank or Banks.

### § 1268.4 Member or housing associate nexus requirement.

(a) *General provision.* To qualify as AMA, any assets described in §1268.3 must be acquired in a purchase or funding transaction only from:

(1) A participating financial institution, provided that the asset was:

(i) Originated or issued by, through, or on behalf of the participating financial institution, or an affiliate thereof; or

(ii) Held for a valid business purpose by the participating financial institution, or an affiliate thereof, prior to acquisition by the Bank; or

(2) Another Bank, provided that the asset was originally acquired by the selling Bank consistent with this section.

(b) *Special provision for housing finance agency bonds.* In the case of housing finance agency bonds acquired by a Bank from a housing associate located

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in the district of another Bank (local Bank), the arrangement required by the definition of “participating financial institution” in §1268.1 between the acquiring Bank and the local Bank may be reached in accordance with the following process:

(1) The housing finance agency shall first offer the local Bank right of first refusal to purchase, or negotiate the terms of, its proposed bond offering;

(2) If the local Bank indicates, within three business days, it will negotiate in good faith to purchase the bonds, the housing finance agency may not offer to sell or negotiate the terms of a purchase with another Bank; and

(3) If the local Bank declines the offer, or has failed to respond within three business days, the acquiring Bank will be considered to have an arrangement with the local Bank for purposes of this section and may offer to buy or negotiate the terms of a bond sale with the housing finance agency.

### § 1268.5 Credit risk-sharing requirement.

(a) *General credit risk-sharing requirement.* For each AMA product, the Bank shall implement and have in place at all times, a credit risk-sharing structure that:

(1) Requires a participating financial institution to provide the credit enhancement necessary to enhance an eligible asset or pool to the credit quality specified by the terms and conditions of the AMA product, provided, however, that such credit enhancement results in the eligible asset or pool being at least AMA investment grade, as defined in §1268.1; and

(2) Meets the requirements of this section.

(b) *Determination of necessary credit enhancement.* (1) No later than 30 calendar days after the purchase of the asset or after a pool closes, the Bank shall determine the total credit enhancement necessary to enhance the asset or pool to at least AMA investment grade and to be consistent with the terms and conditions of a specific AMA product. The enhancement shall be for the life of the asset or pool. The Bank shall make this determination for each AMA product using a model and methodology that the Bank deems

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appropriate, subject to paragraph (f) of this section.

(2) A Bank shall document its basis for concluding that the contractual credit enhancement required from each participating financial institution with regard to a particular asset or pool will equal or exceed the credit enhancement level specified in the terms and conditions of the AMA product and determined in accordance with paragraph (b)(1) of this section.

(c) *Credit risk-sharing structure.* Under any credit risk-sharing structure, the credit enhancement provided by the participating financial institution shall at all times meet the following requirements:

(1) The participating financial institution that is providing the credit enhancement required under this paragraph (c) shall in all cases:

(i) Bear the direct economic consequences of actual credit losses on the asset or pool:

(A) From the first dollar of loss up to the amount of expected losses; or

(B) Immediately following expected losses, but in an amount equal to or exceeding the amount of expected losses; and

(ii) Fully secure its direct credit enhancement obligation in accordance with § 1266.7; and

(2) The participating financial institution also may provide all or a portion of the credit enhancement, with the approval of the Bank, by:

(i) Contracting with an insurance affiliate of that participating financial institution to provide an enhancement, but only where such insurance is positioned in the credit risk-sharing structure so as to cover only losses remaining after the participating financial institution has borne losses as required under paragraph (c)(1)(i) of this section;

(ii) Purchasing loan-level insurance only where:

(A) The participating financial institution is legally obligated at all times to maintain such insurance with a qualified insurer; and

(B) Such insurance is positioned in the credit enhancement structure so as to cover only losses remaining after the participating financial institution

has borne losses as required under paragraph (c)(1)(i) of this section;

(iii) Purchasing pool-level insurance only where:

(A) The participating financial institution is legally obligated at all times to maintain such insurance with a qualified insurer;

(B) Such insurance insures that portion of the required credit enhancement attributable to the geographic concentration and size of the pool; and

(C) Such insurance is positioned last in the credit enhancement structure so as to cover only those losses remaining after all other elements of the credit enhancement structure have been exhausted;

(iv) Contracting with another participating financial institution in the Bank's district to provide a credit enhancement consistent with this section, in return for compensation; or

(v) Contracting with a participating financial institution in another Bank's district, pursuant to an arrangement between the two Banks, to provide a credit enhancement consistent with this section, in return for compensation.

(d) *Loans guaranteed or insured by a department or agency of the U.S. government.* Instead of the structure set forth in paragraph (c) of this section, a participating financial institution also may provide the required credit enhancement through loan-level insurance that is issued by an agency or department of the U.S. government or is a guarantee from an agency or department of the U.S. government, provided that the government insurance or guarantee remains in place for as long as the Bank owns the loan.

(e) *Qualified insurers.* (1) Within one year of January 18, 2017, each Bank must develop, and subsequently maintain, written financial and operational standards that an insurer must meet for the Bank to approve it as a qualified insurer. A Bank shall review qualified insurers at least once every two years to determine whether they still meet the financial and operational standards set by the Bank. A Bank may delegate responsibility for development of these standards and approval of qualified insurers to another

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Bank or group of Banks pursuant to § 1268.8.

(2) Only qualified insurers may provide private loan insurance on AMA eligible assets or the loan or pool insurance allowed as part of the credit enhancement structure for AMA products under paragraphs (c)(2)(ii) or (iii) of this section.

(f) *Appropriate methodology for calculating credit enhancement.* A Bank shall use a model and methodology for estimating the amount of credit enhancement for an asset or pool. A Bank shall provide to FHFA upon request information about the model and methodology, including and without limitation results of any model runs and the results of any tests of the model performed by the Bank. FHFA reserves the right to direct a Bank to make changes to its model and methodology, and a Bank promptly shall institute any such FHFA-directed changes.

## § 1268.6 Servicing of AMA loans.

(a) Servicing of AMA loans may be performed by or transferred to any institution, including an institution that is not a member of the Bank System, provided that the loans, after such transfer, continue to meet all requirements to qualify as AMA under §§ 1268.3, 1268.4, and 1268.5.

(b) The transfer of mortgage servicing rights and responsibilities must be approved by the Bank or Banks that own the loan or a participation interest in the loan.

(c) A Bank shall have in place policies and procedures to ensure that the transfer of mortgage servicing rights does not negatively affect the credit enhancement on the loans in question or substantially increase the Bank's exposure to the credit risk for the asset or pool.

## § 1268.7 Reporting requirements for acquired member assets.

Each Bank shall report information related to AMA in accordance with the instructions provided in the Data Reporting Manual issued by FHFA, as amended from time to time.

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## § 1268.8 Administrative transactions and agreements between Banks.

(a) *Delegation of administrative duties.* A Bank may delegate the administration of an AMA program to another Bank whose administrative office has been examined and approved by FHFA, or previously examined and approved by the Federal Housing Finance Board, to process AMA transactions. The existence of such a delegation, or the possibility that such a delegation may be made, must be disclosed to any potential participating financial institution as part of any AMA-related agreements signed with that participating financial institution. A Bank may contract with one or more parties, including without limitation another Bank, to provide services related to the administration of its own AMA program or the AMA program of another Bank for which it has been delegated administrative responsibility, without the necessity for further disclosure to the participating financial institutions.

(b) *Termination of agreements.* Any agreement made between two or more Banks in connection with the administration of any AMA program may be terminated by any party after a reasonable notice period.

(c) *Delegation of pricing authority.* A Bank that has delegated its AMA pricing function to another Bank shall retain a right to refuse to acquire AMA at prices it does not consider appropriate, pursuant to contractual provisions among the parties.

## PART 1269—STANDBY LETTERS OF CREDIT

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