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December 3, 2012

Federal Housing Finance Agency
Office of Strategic Initiatives
400 7th Street, SW
Washington, D.C. 20024

Re: Comments on FHFA White Paper: Building a New Infrastructure for the Secondary Mortgage Market

To Whom it May Concern:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Federal Housing Finance Agency's (FHFA) white paper, entitled "Building a New Infrastructure for the Secondary Mortgage Market." We appreciate your consideration of our views on this important matter. By way of background, CUNA is the nation's largest credit union trade organization, representing approximately 90 percent of our nation's 7,000 state and federal credit unions, which serve about 95 million members.

As stated in the February 2012 *Strategic Plan for Enterprise Conservatorships* published by FHFA, and as part of Fannie Mae's and Freddie Mac's (Enterprises') 2012 Conservatorship Scorecards, FHFA is requiring the Enterprises to submit a plan for a new securitization platform infrastructure, propose a model pooling and servicing agreement (PSA), and make recommendations for standard Enterprise trust documentation by December 31, 2012.

Regarding a new infrastructure for the secondary mortgage market, CUNA would like to emphasize, the following key principles that we urge the agency to ensure are addressed satisfactorily in the final infrastructure and PSA:

- Provide Equal Access: The secondary mortgage market must be open to lenders of all sizes on an equitable basis;
- Provide for a Neutral Third Party: There must be a neutral third party in the secondary market, with its sole role as a conduit to the secondary market. This entity would necessarily be independent of any firm that has any other role or business relationship in the mortgage origination and securitization process;
- Promote Strong Oversight and Supervision: There should be appropriate regulatory oversight to ensure safety and soundness, including strong capital requirements;

- Support Durability: The new system should ensure that mortgage loans will continue to be made to qualified borrowers even in troubled economic times;
- Provide for Predictable and Affordable Payments: The new system must include consumer access to products that provide for predictable, affordable mortgage payments to qualified borrowers. Traditionally, this has been provided through fixed-rate mortgages (such as the 30-Year Fixed Rate Mortgage), and it is important that qualified borrowers continue to have access to products that provide for predictable and affordable mortgage payments;
- Foster Affordable Housing: The important role of government support for affordable housing should be a function separate from the responsibility of secondary market entities; and
- Provide for an Ample Transition: The transition to the new housing finance system must be reasonable and orderly.

We urge FHFA to address also the impact of its proposal on the seven factors listed above. With regard to FHFA's specific questions, CUNA's responses are addressed below following each of the agency's questions:

1. **The proposed securitization platform has four core functions (issuance, disclosure, bond administration and master servicing). Will these core functions provide an efficient and effective foundation for the housing finance system going forward?**

   We agree that the current infrastructures of the Enterprises are outmoded, and should be replaced with a common, more efficient model. In general, CUNA believes that the creation of a more efficient and standardized securitization platform will be of benefit to issuers and guarantors choosing to participate in the secondary mortgage market. However, CUNA remains concerned that the specific details of any replacement infrastructure have yet to be developed or publicized, and it is very difficult, if not impossible, to provide meaningful comments without more details of the proposed platform.

   Additionally, regardless of the end result for any new infrastructure being considered, CUNA urges FHFA to give consideration to developing appropriate tools and technologies to protect against fraud for all parties utilizing such securitization system that could be otherwise adversely affected.

2. **Are there additional functionalities that should be considered as core functions of the platform? For example, should the platform independently verify or determine the following or rely on an issuer or guarantor:**
   a. **Underwriting and loan eligibility rules?**
   b. **Pooling rules?**

CUNA requests the agency consider incorporating and attaching underwriting guidance from the Federal Housing Administration (FHA) and the U.S. Department of Veteran's Affairs (VA) along with the Selling Guide as part of any new platform. The Uniform Loan Delivery Data (ULDD) initiative should dictate underwriting criteria for the platform, as well. CUNA also recommends that the agency consider merging the existing automated underwriting engines, Desktop Underwriter and Loan Prospector, as it moves forward with the development of the new infrastructure. CUNA understands that the ULDD will perform verification of the underwriting and loan eligibility rules, as well as the pooling rules. If this is the case, CUNA does not support a requirement that the platform independently verify the underwriting and loan eligibility rules or the pooling rules.

3. **Will the framework for a model PSA described in this paper provide the foundation for a standardized contractual framework for the housing finance system going forward?**

CUNA generally supports the concept of developing a more standardized PSA for use across the mortgage industry. We believe that such standardization of the contractual framework would assist in eliminating confusion and differences between various forms of contractual agreements and PSAs existing in the marketplace today. Although we are generally supportive of such a standardization initiative, again we cannot fully address such an endeavor without more details. We urge the agency to seek comments on the actual proposed contractual framework, including the complete details of the contractual agreements that the agency proposes to adopt, as part of such an initiative.

4. **Are there additional elements/attributes that should be included in a model PSA? For example,**
    a. **Should the model PSA define when a non-performing loan is required to be purchased out of the trust?**
    b. **Should the model PSA define when a non-performing loan is required to be transferred to a specialty servicer?**

CUNA encourages the agency to include guidance as to when non-performing loans should be purchased out of the loan pools. Similarly, CUNA supports the inclusion of additional guidance as to when non-performing loans are required to be transferred to specialty servicers. FHFA should consider delineating specific and defined parameters in both of these areas as part of the infrastructure and platform development process.

As part of the financial crisis, certain foreclosure moratoriums were put in place affecting some of the nation's largest lenders. Credit unions that partnered with some of these lenders for subservicing purposes were unfortunately prohibited from removing mortgages out of loan pools, as a *result. Consequently, parties were in breach of the existing PSAs, with no adequate remedy in place. Additionally, some lenders were subjected to FHA and VA penalties. Had specific guidance been included in such PSAs, these scenarios could possibly have been avoided.*

5. **If the framework for a model PSA is a good contractual foundation, how should compliance with the PSA be monitored in the future?**

   Parties should have access to historical data to determine whether or not PSAs are being followed, so that investors/guarantors may assess reliability when choosing a loan servicer. Based on the information contained within the agency's white paper, it appears that the proposed platform will provide extensive data, and CUNA encourages FHFA to ensure that is the case as the design process moves forward.

6. **What enhancements to the role of trustee should be considered in order to better attract private capital to the housing finance system?**

   Currently, the pricing for poor and high performing portfolios is generally the same. However, loan portfolio pricing should be assigned relative to the performance of each portfolio. As the agency proceeds with the development of any proposed infrastructure and platform, CUNA urges the adoption of a score card performance system, which will consider delinquencies, geographic areas, and other factors to ensure that responsible lenders and servicers are recognized and portfolios are priced accordingly.

7. **How should document custodial and assignment responsibilities be handled in the housing finance system going forward?**

   CUNA recommends that the agency consider incorporating both the document custodial and assignment responsibilities into the proposed PSA. Custodial agreements should be in-processed and capable of being tracked through the platform. While there have been marked improvements in document custodial and assignment practices in recent years as a result of litigation and enforcement in the marketplace with certain vendors, the inclusion of these responsibilities into the PSA will strengthen and support the housing finance system further in the future, and create a centralized methodology for these functions, which is needed on many levels within the mortgage lending industry.

Conclusion

As FHFA moves forward with completing its design of a new infrastructure for the secondary mortgage market, CUNA again urges the agency to take steps to ensure that the impact of a new infrastructure on small lenders such as credit unions is positive for them and their members. It is imperative that credit unions continue to maintain access to the secondary mortgage market.

Questions such as: Will small lenders be allowed to participate? How will "access" be defined? Will such access be effective, or will it occur on terms that place small institutions at a pricing or other disadvantage? Is there a chance that some financial institutions might not have access to the market? (For example, access is often limited by the dollar amount of the security (minimum pool amounts of $5 million, $10 million or $50 million dollar pools)). The use of minimum pools will almost certainly block small credit unions from having access to the market. These and other concerns must be specifically addressed by the agency to ensure that small lenders including credit unions continue to have the ability to possess equitable access to the secondary mortgage market.

Additionally, CUNA urges the agency to allow issuers and primary servicers to access the platform directly through any new infrastructure which may be developed. Inputting data directly, rather than having to pass such information along to primary servicers, would be beneficial for smaller financial institutions.

Also, as not-for-profit, member-owned cooperatives, credit unions exist to serve their members, and allowing direct access to the secondary mortgage market is critical to small lenders relying on the market for liquidity purposes.

Finally, CUNA urges the agency to approach the definitions within any new infrastructure very carefully. Depending on how certain terms are defined within either the infrastructure, the platform, or a standardized PSA could have far-reaching implications for small lenders such as credit unions. We would welcome the opportunity to work with the agency going forward in this regard.

Thank you for the opportunity to comment on FHFA's white paper. If you have any questions concerning our letter, please feel free to contact CUNA's Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 508-6732.

Sincerely,

Jared Ihrig
Senior Assistant General Counsel