

NAR Analysis of Moving Housing Forward Act

Currently being written/modified by Reps. Delaney, Himes and Carney

Summary: As currently written, the proposed bill contains 2 main provisions. First, the legislation establishes a new mortgage credit risk sharing program for Fannie Mae and Freddie Mac and subsequent studies and reports issued to Congress on the progress and effects for the purpose of economic feedback. Also, the legislation establishes congressional oversight of the budget and development of the GSE's Common Securitization Platform (CSP) by urging FHFA and the GSEs to develop the necessary functionality for Single Security and ensures the functionality for other participants.

Section 2: Mortgage Credit Risk Sharing Pilot Program

This section of the bill sets forth a number of requirements for a new mortgage credit risk sharing pilot program through the GSEs and the subsequent studies and reports issued to the FHFA and Congress.

NAR Comment: The most immediate problem that the GSEs face is a lack of capital. As their capital continues to decline under conservatorship, this increases the chance that the entities will need an additional draw from the federal government and potentially destabilizing the housing market. We believe this legislation would be a good opportunity to solve this looming problem by including language to create an insurance fund in lieu of GSE capital to guard against credit losses. Rather than recapitalizing the GSEs and then spinning them off to the hands of private investors, NAR believes that these firms can best build a sufficient capital cushion without pressure from shareholders to charge consumers significantly higher mortgage rates.

Specifically, we recommend a provision to create a mortgage insurance fund for both Fannie Mae and Freddie Mac, which will be funded by a reasonable portion of the entities' current guarantee fees (G-fees). The mortgage insurance fund will cover claims on the principle and interest of government-backed securities. This insurance fund will be independent of the GSE's and cannot be used by them unless approved by their regulator for the sole purpose of covering future credit losses. Also, similar to the language in the 2008 Economic Recovery Act, Congress and the federal government would be prohibited from using money in the insurance fund for non-housing expenditures.

(a) Establishment

The Director of the FHFA will require Fannie Mae and Freddie Mac to establish a Mortgage Credit Risk Sharing Pilot Program.

(b) Pilot Program Requirements

Under the Pilot Program, the enterprises shall conduct risk-sharing transactions for a 3 year period. These transactions with private sector entities shall share credit risk on a pool of single-family residential mortgage loans that back securities on which the enterprise guarantees the timely payment of principal and interest. These transactions will meet the following requirements:

1) Representative sample of the entire GSE book of business

NAR Comment: We recommend language to ensure all of Fannie Mae and Freddie Mac's loan products such as 15-year, ARMs, special programs, HomeReady and HomePath.

2) Private sector first loss position of 5% on average per year

NAR Comment: We believe this requirement may be a bit high and recommend lowering the number between 3-4 percent as recommended by various scholars. Also, with a higher first loss

position by the private sector, would it be prudent to require the GSEs to lower existing guarantee fees and loan level pricing adjustments since their credit risk theoretically would be lower? Additionally, we have concerns about insurer's ability to be in the market, especially during economic downturns. What happens if there are no insurers willing to serve the market or if they are unable? We recommend language that would require these entities to participate at all times and in all markets to ensure consumers have counter-cyclical protections or allow for the government to do so.

3) Coverage of 95% on average per year of catastrophic/second loss position

NAR Comment: We have concerns that the securities may not be TBA eligible. We support language to clarify the securities are TBA eligible. Currently, loans must be de-risked in order to be TBA eligible. How can we ensure the market will accept securities that are not backed by a sovereign, but are backed by a third-party catastrophic insurer as de-risked?

4) Shared 90% and 10% on average between GSEs and private sector

NAR Comment: We have concerns about insurer's ability to be in the market, especially during economic downturns. What happens if there are no insurers willing to serve the market? We recommend language that would require these entities to participate at all times and in all markets to ensure consumers have counter-cyclical protections or allow the government to do so.

5) The pilot program will be equal to approximately 5% of the book of business

6) Actual losses must be calculated

7) Length of contracts set to minimum of 10 years for 30-year mortgage and 5 years for 15-year mortgages

(c) Analysis by Enterprises

During the Pilot Program, the enterprises will measure the credit risk and the amount of risk transferred. Each enterprise will publish a three-year timeline that includes various metrics and annual goals of the Pilot Program as well as a detailed assessment of the completed credit risk transfers under the Pilot Program.

NAR Comment: We recommend language to include a study specifically on the pilot program's impact on the availability of affordable credit for consumers, done on a quarterly basis.

(d) Additional Requirements

The enterprises will be subject to various other requirements regarding the collection of loan level data, broadening the investor base, and refining transaction structure designs.

The Director of the Federal Housing Finance Agency will be required to promote the credit risk market to ensure a liquid secondary market, seek additional sources of private capital, and make available 100 percent of mortgages for credit risk transactions. Within one year the FHFA will, coordinate with various regulatory agencies to issue a report on how to incentivize additional sources of private capital to participate in credit risk sharing transfers and identify and provide recommendations to remove regulatory hurdles that may prevent participation.

(e) Significant Economic Downturn

If the Director of the FHFA, in consultation with the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, determines the U.S. is undergoing a significant economic downturn, the Director may lower the percentage of required first loss and catastrophic transactions as well as the percentage of total eligible risk sharing securities.

NAR Comment: We recommend additional language to allow the FHFA Director to lower the percentage of required first loss and catastrophic transactions as well as the percentage of total

eligible risk sharing securities, if he or she sees a dramatic increase in mortgage costs for consumers and/or a decrease in the availability of affordable credit for consumers. Also, the Director may temporarily suspend the program if he or she believes the pilot program may adversely impact the housing market. In addition, if a secondary market for insured CRTs is to be supported by the FHFA, then a trust for upfront capital should be created to ameliorate the counterparty risk for the GSEs.

(f) Studies and Reports

The Director of the FHFA and each enterprise will carry out an ongoing study of the Pilot Program. The Director of the FHFA and each enterprise will issue a report to the House Committee on Financial Services and the Senate Committee of Banking, Housing and Urban Affairs every quarter containing all findings made in the aforementioned study and a determination of the impact the Pilot Program is having credit risk-sharing transaction pricing and on mortgage credit pricing.

NAR Comment: As mentioned above, we would like to have language to include a study specifically on the pilot program's impact on the availability of affordable credit for consumers.

FHFA reports will include a description of the new credit risk sharing pilot programs and the steps FHFA intends to take to solicit new ideas for innovative ways to lay off first loss and second loss credit risk. FHFA will also describe how it intends to move forward with mortgage insurance focused transactions. Additionally, the FHFA will report the amount of credit risk that has been transferred from the enterprises on an annual basis.

In preparation for the report, the FHFA shall solicit public feedback to generate ideas and potential forms of credit risk transfers, and identify potential barriers to entry for participants. Confidentiality of participants' proprietary data shall be protected in issuing the report.

(g) Rule of Construction

Nothing in this section shall be construed to limit the ability of the Director to conduct customized risk sharing transactions.

(h) Termination

The Pilot Program shall last a minimum of 3 years, as determined by the Director of the FHFA. After that period, the Director will examine the economics of developing the Pilot Program into a continuous risk sharing program.

Section 3: Securitization Platform

(a) Sense of Congress

The capacity and functionality of the Platform should be expanded to facilitate the issuance of mortgage-backed securities by issuers other than the enterprises, and Common Securitization Solutions (CSS) should develop the contractual and disclosure framework for issuers other than the enterprises;

The property of the enterprises, including intellectual property, technology, systems, and infrastructure (as well as technology, systems, and infrastructure developed by the enterprises for the Platform), and any other legacy systems, infrastructure, processes, and the Platform itself are valuable assets of the enterprises; and

The enterprises should receive appropriate compensation for the transfer of any such assets.

(b) Reports to Congress

No later than 1 year after the date of enactment, and every year thereafter, the FHFA shall submit a report to Congress on the status of the development of the Platform that includes project timelines and the projected budget for the development of the Platform as well as the Contracts and Disclosure Framework. The FHFA will also report any decisions made with respect to the Single Security and Common Securitization Platform Industry Advisory Group to remove barriers to implementation.

NAR Comment: We recommend language that requires at least 1 REALTOR® to be a part of the Single Security and Common Securitization Platform Industry Advisory Group.

No later than 3 years after the date of enactment, the FHFA shall submit to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services a plan to transition the Platform and Contracts and Disclosure Framework (CDF) from a joint venture owned by the enterprises into a private, nonprofit entity.

The FHFA Inspector General shall issue an annual report on the status of the Platform until transitioned.

(c) Board of Managers

No later than 6 months after the date of enactment of this Act, the FHFA shall direct the enterprises and CSS to begin reconstituting the CSS Board of Managers to meet various composition requirements. The members shall not owe a fiduciary duty to the enterprises.

NAR Comment: We recommend language that requires at least 1 real estate professional to be a part of the Board of Managers.

(d) Authorized and Prohibited Activities

This subsection sets forth various activities that are authorized or prohibited for the CSS and future iterations.

Within 2 years of enactment, the CSS will develop and ensure compliance with standards for becoming an approved issuer for an entity other than an enterprise, as well as determine loans that may serve as collateral for securities issued thru platform and various responsibilities of participants. The CSS will also operate and maintain the Platform and establish fees for use.

Within 2 years, CSS shall facilitate issuance of securities by the enterprises and ensure the capabilities of other entities to issue securities.

The Director may delay for two 1-year periods if: 1) Director and Secretary Treasury determine it's not feasible and could adversely impact the housing market. 2) Submit a report to Congress justifying the delay.

Provides authority for incidental activities.

Prohibits the Platform from directly guaranteeing, purchasing, owning or holding loans, and being involved in representation and warranty policies.

(e) Setting of Capital and Collateral Requirements and Coordination in Regulating the Platform

In consultation with prudential regulators and insurance regulators, the FHFA shall set capital and collateral requirements on all credit risk sharing transactions. The FHFA shall coordinate with other agencies regulating the platform to: 1) avoid duplication of examination activities, reporting requirements, requests for information, to extent possible, 2) coordinate exam activities, 3) rely upon

exam reports from other agencies to the extent possible, 4) not make any regulatory requirement that would conflict with other agencies.

NAR Comment: We support language to ensure FHFA also consult with the real estate industry when setting capital and collateral requirements.

(f) Regulations

The FHFA shall have general regulatory authority over the CSS and any private successor to ensure safety and soundness.

Within 6 months, FHFA shall direct the CSS to improve the Single Security and CSP Industry Advisory Group by holding quarterly meetings and create any needed subcommittees. The FHFA shall take an active role in the group to address implementation and policy issues.

CSS, with a 2/3 vote of the Board and Approval of the Director of FHFA, shall establish standards for issuance of securities using established industry standards and be allowed to revise with a similar vote. Establishes a permanent industry working group to be made up of fair representation of participants of the Platform to advise the CSS on standards.

NAR Comment: We support language to include at least 1 REALTOR® to be a part of the permanent industry working group.

(g) Funding by the FHFA and Transfer of Property

At a time established by the FHFA, they will transfer a predetermined amount of funds and any property including intellectual property, technology, systems, and infrastructure from the enterprises to CSS to begin carrying out the activities and operations of the Platform. FHFA shall have the authority to require that any transfer authorized occurs as an exchange for value including through the provision of appropriate compensation to the enterprises.

(h) Transition from CSS

No later than 4 years after enactment, the FHFA shall oversee the transition of the platform to nonprofit entity. The Director may make a single delay for 1-year if necessary and appropriate.

This subsection describes the details such as the appointment of the Board of Directors, by-laws, and repayment of cost for the transition. The FHFA shall contract with a third-party to value the total cost of the property transferred. The nonprofit shall be allowed to charge a reasonable fee for use of the platform to repay this cost.

NAR Comment: Again, we support language to include at least 1 real estate practitioner to be a part of the Board of Directors.

(i) Use of platform by Non-Enterprises

Entities other than the enterprises shall not be allowed to utilize the platform until Congress resolves conservatorship.

(k) Rule of Construction

FHFA/CSS can develop GSE capability first.

This does not prohibit the use of PLS without the use of the platform.