



November 22, 2021

The Honorable Sandra Thompson  
Federal Housing Finance Agency  
400 7th Street, SW  
Washington, D.C., 20219

**Re: Notice of Proposed Rulemaking Pursuant to 12 CFR Part 1240 RIN 2590–AB17**

Dear Acting Director Thompson,

We write in response to the Notice of Proposed Rulemaking on the Federal Housing Finance Agency (“FHFA”) Enterprise Regulatory Capital Framework Rule (“Proposed ERCF”) on the Prescribed Leverage Buffer Amount (“PLBA”) and Credit Risk Transfer (“CRT”). The Structured Finance Association<sup>1</sup> (“SFA”) appreciates the work that has gone into the Proposed Rule, and for the opportunity to provide feedback.

### **Introduction: The 2021 ERCF is a Welcome Improvement that Incorporates Industry Feedback**

At a high level, we believe that the changes in the Proposed ERCF are directionally in line with the principles for which SFA and others in the industry and policy communities have advocated, particularly in the context of the 2020 Enterprise Capital Rule (“ECR”) being unnecessarily punitive towards CRT. SFA’s response to the 2020 ECR<sup>2</sup> noted that, under the 2020 ECR, the GSEs would be incented to hold more risk, their cost of capital would increase, and the economic benefits passed along to mortgage borrowers via lower g-fees will be reduced or eliminated. We therefore advocated suspension of the 2020 ECR until a more comprehensive assessment of its impact could be conducted. In May of 2021, the FHFA published a report<sup>3</sup> which presented the FHFA’s views on the costs and benefits of CRT, which SFA and many others believed presented an inaccurate set of conclusions regarding the economic benefits of CRT.

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<sup>1</sup>The Structured Finance Association is the leading securitization trade association representing over 370 member companies from all sectors of the securitization market. Our core mission is to support a robust and liquid securitization market and help its members and public policymakers grow credit availability and the real economy in a responsible manner. SFA provides an inclusive forum for securitization professionals to collaborate and, as industry leaders, drive necessary changes, advocate for the securitization community, share best practices and innovative ideas, and offers professional development for industry members through conferences and other programs. For more information, visit [www.structuredfinance.org](http://www.structuredfinance.org).

<sup>2</sup> [https://structuredfinance.org/wp-content/uploads/2020/08/SFA-Comment-to-RIN-2590-AA95\\_08312020.pdf](https://structuredfinance.org/wp-content/uploads/2020/08/SFA-Comment-to-RIN-2590-AA95_08312020.pdf)

<sup>3</sup> <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/CRT-Overview-05172021.pdf>

In response to that report, in September of 2021, SFA published a White Paper on the Economics of Credit Risk Transfer at the Government Sponsored Enterprises (“SFA White Paper”)<sup>4</sup>. The SFA White Paper analyzed claims made in the earlier FHFA report and demonstrated that the economic benefits of CRT justified a different regulatory capital treatment than required under the 2020 ECR. While the analysis in the SFA White Paper focuses on the 2020 ECR and the May 2021 FHFA Report, it does note that the 2021 Proposed ERCF more closely aligns regulatory capital requirements with the economic benefits of CRT. This alignment makes it more economical for the GSEs to transfer risk to private capital by engaging in CRT transactions. In particular, we agree with the 2021 Proposed ERCF’s removal of the overall effectiveness adjustment that applied to all CRT exposures retained by the GSEs. In total, SFA views such changes in the 2021 Proposed ERCF as a positive development, particularly as Fannie Mae returns to CRT issuance. We hope this trend continues.

### Areas for Further Analysis

While we are pleased with the improvement in regulatory capital treatment of CRT in the 2021 Proposed ERCF compared to the 2020 ECR, there are a few points where analysis will build upon those improvements. As noted in the SFA White Paper, there are additional areas in which the application of regulatory capital requirements for the GSEs’ CRT programs could be improved upon. We view the following topics as useful starting points for a discussion on how best to tailor regulatory capital rules for the GSEs so that they can fill their statutory purpose of providing liquidity to the market while operating in a safe and sound manner.

#### *1) Establish a Methodology for the Prudential Risk Weight Floor Calculation*

We believe that the move from a prudential risk weight floor for retained CRT exposure from 10% to 5% is directionally correct. As we noted in our response to the 2020 ECR, the risk weight floor increasing from 0% in the 2018 Enterprise Capital Rule to 10% in the 2020 ECR was unprecedented, and “double-counted” the risk of CRT due to a 10% haircut already being applied. Moreover, the enumerated risk was more in line with the “general effectiveness” risk specified in the 2018 Enterprise Capital Rule, which placed the leveraged ratio charge against trust assets at 1.5%. Finally, the risk floor of 10% was treated differently under Dodd-Frank Act Stress Tests (“DFAST”). In short, the lack of a stated rationale in the 2020 ERCF in mandating a 10% floor was troubling, especially when compared to similar types of risk being treated very differently in other contexts.

While the proposed decrease of the mandated floor from 10% to 5% is directionally correct, the industry, as well as the analytical integrity of the Enterprise Capital Framework, would benefit from a robust, rigorous explanation of the methodology used to arrive at that level. Coming up with a set of policies or objectives or looking to other regulatory regimes (or DFAST) for a baseline

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<sup>4</sup> <https://structuredfinance.org/wp-content/uploads/2021/09/SFA-CRT-White-Paper-FINAL-FORMAT.pdf>

treatment of risk would help calibrate the appropriate risk floor. Moreover, such an exercise might facilitate an overall regulatory capital approach that could be used by different types of financial institutions subject to regulatory capital requirements, thus minimizing instances of capital arbitrage that result from disparate treatment of similar levels of capital risk at such institutions.

*2) Prudential Regulators Should Consider a Holistic Regulatory Capital Approach for CRT*

Elaborating on the point about establishing a methodology for establishing a prudential risk weight floor, we believe prudential regulators—including FHFA—under the auspices of the Financial Stability Oversight Council (“FSOC”) should create a consistent regulatory capital framework for CRT. The GSE’s, under the direction of the FHFA, have demonstrated how CRT can be utilized as an effective as a risk management tool. We believe these lessons can be applied to other regulators and the entities they regulate to establish CRT as an effective risk management tool across the financial services industry.

While this is a longer-term goal, the maturation of the CRT market will yield economic benefits for the GSEs and for the economy at large. It will help the United States remain competitive globally, especially if the nascent domestic CRT market (which today is primarily limited to the GSEs) can encompass other financial institutions and expand to other asset classes. SFA would be glad to provide any assistance and coordination in furtherance of these objectives.

We again thank the FHFA for the Proposed ERCF which incorporates feedback that SFA and others in the industry and policy have shared, and for the opportunity to provide additional feedback. We encourage you to continue your efforts to re-evaluate the 2020 ERCF. If you have further questions, we would be happy to provide assistance.

Sincerely,

Michael Bright,

CEO, Structured Finance Association