



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

DEC 19 2005

Mr. Richard F. Syron
Chairman and Chief Executive Officer
Freddie Mac
8200 Jones Branch Drive
McLean, VA 22102-3110

Dear Mr. Syron:

By letter dated March 15, 2005, Freddie Mac wrote to the Department requesting guidance on the housing goals counting rules governing investments in certain types of Real Estate Mortgage Investment Conduits (REMICs) structured as Commercial Mortgage-Backed Securities backed by multifamily residential mortgages and non-residential commercial mortgages ("CMBS"), and as Asset-Backed Securities backed by conforming residential mortgages and non-conforming (jumbo) residential mortgages ("ABS") (hereafter referred to as "Mixed-Pool CMBS" or "Mixed-Pool ABS"). By letter to Freddie Mac dated July 11, 2005, the Department requested information regarding the CMBS and ABS transactions reported in Tables 15 and 16 of Freddie Mac's 2004 Annual Housing Activity Report. Freddie Mac responded with the requested information by letter dated August 19, 2005. On September 30, 2005, the Department provided Freddie Mac detailed guidance on how to calculate housing goals credit for "directed-pay tranche" REMICs, as defined in that guidance.

The Department has now completed its review of the information received on August 19, including the legal opinions provided by Freddie Mac, and, for the reasons discussed herein, has concluded that Freddie Mac does not have the legal authority under the Federal Home Loan Mortgage Corporation Act ("Charter Act") to purchase, or to purchase and guarantee, Mixed-Pool CMBS, or Mixed-Pool ABS, in which all principal and interest payments from the underlying collateral are pooled together and then distributed to investors in various REMIC classes according to a priority established by the REMIC (hereafter, "single waterfall Mixed-Pool CMBS" or "single waterfall Mixed-Pool ABS").

Specifically, the Department has determined that Freddie Mac's purchases of single waterfall Mixed-Pool ABS constitute "mortgage purchases" within the meaning of section 305(a)(1) of the Charter Act and cannot be characterized as investments made pursuant to Freddie Mac's investment authority under section 303(d) of the Charter Act. Because Freddie Mac's residential mortgage purchase authority is expressly limited by section 305(a)(2) of the Charter Act to the purchase of conforming residential mortgages, and because Freddie Mac's purchases of single waterfall Mixed-Pool ABS necessarily entail an ownership interest in both the conforming and non-conforming residential mortgages backing those securities, the purchase of REMICs structured as single waterfall Mixed-Pool ABS violates the express limitations of section 305(a)(2). Freddie Mac stated in its letter dated August 19, 2005 that "[b]ecause of the statutory limitations in section 305(a)(2) of the Freddie Mac Act, all of the ABS issuances in which Freddie Mac has invested have

employed directed-pay structures...In a directed-pay structure, Freddie Mac does not acquire any ownership interest in non-conforming mortgages.” The Department agrees with Freddie Mac’s interpretation of its Charter Act limitations with respect to the purchase of an ownership interest in non-conforming mortgages backing single waterfall Mixed-Pool ABS and has determined to disallow housing goals credit for dwelling units derived from such securities. This determination is consistent with Freddie Mac’s statements that it does not purchase such securities.

With respect to single waterfall Mixed-Pool CMBS, the Department has determined that Freddie Mac’s purchases of these securities are unauthorized mortgage purchases within the meaning of section 305(a)(1) of the Charter Act, and cannot be characterized as investments made pursuant to Freddie Mac’s investment authority under section 303(d).

Freddie Mac’s purchases of single waterfall Mixed-Pool CMBS necessarily entail the purchase of ownership interests in the underlying collateral. Given the fact that the underlying collateral includes non-residential commercial mortgages, such purchases are not expressly authorized by section 305(a)(1). Moreover, the Department has concluded that Freddie Mac’s investment authority under section 303(d) does not extend to the purchase of interests in mortgages. Under the statutory scheme laid out by the Charter Act, Freddie Mac’s exclusive authority to purchase mortgages is established in section 305(a)(1) of the Charter Act, and the Charter Act’s specific authority to purchase mortgages under this section precludes the use of its general authority under section 303(d) for this same purpose.

Finally, the Department has concluded that Freddie Mac’s implied or incidental corporate powers do not authorize Freddie Mac to purchase ownership interests in commercial mortgages. In reviewing the extent to which Freddie Mac’s implied or incidental powers may extend to the purchase of interests in non-residential commercial mortgages, the Department concludes that these powers are intended to facilitate Freddie Mac’s express authorities, including the authority to purchase residential mortgages pursuant to section 305(a), for the purpose of fulfilling its statutory objectives as defined in section 301 of the Charter Act. Freddie Mac’s implied or incidental powers do not confer separate or different express authorities to purchase types of mortgages not expressly authorized in section 305(a) of the Charter Act.

Because Freddie Mac’s purchases of REMICs structured as single waterfall Mixed-Pool CMBS are not authorized by either section 303(d) or section 305(a)(1) of the Charter Act, and are beyond the scope of Freddie Mac’s implied or incidental powers, it is the Department’s determination that Freddie Mac has no authority to make such purchases. Accordingly, the Department will not award housing goals credit for dwelling units derived from Freddie Mac’s purchase, or purchase and guarantee, of single waterfall Mixed-Pool CMBS. This determination is effective for all such securities purchased on and after January 1, 2005.

Should you have any questions about the Department's determinations described herein, please do not hesitate to contact either me or Sandra L. Fostek, Director, Office of Government Sponsored Enterprises Oversight.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Montgomery". The signature is stylized and cursive.

Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner

cc:

Wendell Chambliss
Associate General Counsel
Freddie Mac