

## ***Memorandum***

**TO:** Wells M. Engledow  
Office of General Counsel  
Fannie Mae

**FROM:** Katten Muchin Rosenman LLP

**DATE:** January 23, 2018

**SUBJECT:** **Discussion of Selected Legal Considerations for Fannie Mae MBS Under Revised CRT REMIC Structure**

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You have asked us to address certain legal considerations related to the contemplated assignment of single-family mortgage loans to Fannie Mae trusts and the related issuance of Fannie Mae Guaranteed Mortgage Pass-Through Certificates (MBS) in connection with the CRT REMIC transaction structure as currently proposed. This memorandum updates and supersedes in all respects our memorandum to you dated August 29, 2017. The following is based on information provided by you in telephonic discussions as well as through written materials on the proposed structure, including the related REMIC tax elections and the terms governing future Fannie Mae MBS trusts. Anticipated disclosure changes are detailed in Annex A and Annex B attached hereto. Anticipated trust agreement changes are detailed in Annex C attached hereto. Annex B has been prepared by your special tax counsel, Dechert LLP.

### **I. MBS Trust Assets**

As in the case of mortgage loans underlying MBS issued to date, mortgage loans will be conveyed by Fannie Mae to the related MBS trusts. Under the proposed structure, each MBS trust will then assign beneficial interests in mortgage loan principal and interest payments (net of servicing fees) to a separate trust established by Fannie Mae in exchange for beneficial interests representing the right to receive the same mortgage loan principal and interest payments (net of a portion of the guaranty fees) following one or more REMIC tax elections. No change is contemplated with respect to the current legal mechanism governing the mortgage loan conveyance or MBS issuance or the cumulative effect thereof on the cash flow entitlements of the related MBS trusts. Accordingly, the applicable provisions of existing MBS trust agreements with regard to mortgage loan conveyance and MBS issuance will remain unchanged.<sup>1</sup> After giving effect to the aforesaid assignments of beneficial interests, the MBS trusts will (i) retain

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<sup>1</sup> Anticipated MBS trust agreement changes relating to REMIC tax elections are detailed in Annex C attached hereto.

legal ownership of the mortgage loans included in each underlying pool, (ii) control the servicing of such mortgage loans (including enforcement thereof upon any default under the related loan agreements) and (iii) be entitled to mortgage loan principal and interest payments (net of a portion of the guaranty fees) to the same extent as MBS trusts today. The anticipated REMIC elections under the proposed structure will not affect this characterization. In keeping with the foregoing, we understand that Fannie Mae envisions no changes to the descriptions of the MBS trust or the trust assets in the Fannie Mae Single-Family MBS Prospectus (the “Prospectus”) except as relate solely to federal income tax considerations (Annex B) and limited features directly related thereto (including those set forth in Annex A).

## **II. Whole Pool Certificates**

As noted above, under the proposed structure, the conveyance of mortgage loans to MBS trusts is unaltered from the terms in effect with regard to currently outstanding MBS. Following the conveyance of mortgage loans, beneficial interests in mortgage loan principal and interest payments (net of servicing fees) will be assigned to a separate Fannie Mae trust in exchange for beneficial interests in the same mortgage loan principal and interest payments (net of a portion of the guaranty fees) following one or more REMIC tax elections. After giving effect to the aforementioned assignments of beneficial interests, the related MBS will be entitled to the same payments of principal and interest on the underlying mortgage loans (and will be entitled to the same Fannie Mae guaranty) as are MBS currently. No other entity or issuance vehicle will hold ownership interests, beneficial or otherwise, in the mortgage loans (except with respect to the aforementioned reciprocal assignments of beneficial interests in mortgage loan principal and interest payments). The process and legal terms governing MBS issuance will be unaltered from those governing currently outstanding MBS. Accordingly, we are of the opinion that, under the proposed structure, MBS will constitute “whole pool certificates” in accordance with applicable SEC No-Action Letters to the same extent as MBS issued prior to implementation of the proposed structure. Annex A includes the currently-anticipated addition to the Prospectus related to our whole pool analysis.

## **III. Resecuritization**

Under the proposed CRT REMIC structure, following conveyance of a mortgage loan pool to an MBS trust, the MBS upon issuance will represent the initial securitization of the mortgage loans. Any further assignment of the MBS to a separate issuance vehicle would represent the initial resecuritization of the related mortgage loans. MBS issued pursuant to the proposed structure may be resecuritized to the same extent as, and may be commingled freely with, MBS issued prior to implementation of the proposed structure. Annex A includes the currently anticipated addition to the Prospectus related to our resecuritization analysis.

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## ANNEX A

Anticipated Additions and Revisions to the Fannie Mae Single-Family MBS Prospectus<sup>2</sup>

### **Whole Pool Certificates [New disclosure]**

Our counsel, Katten Muchin Rosenman LLP, has advised us that, under the proposed CRT REMIC structure, certificates issued under the trust documents will qualify as “whole pool certificates” to the same extent as Fannie Mae Guaranteed Mortgage Pass-Through Certificates issued prior to \_\_\_\_\_.

### **Resecuritization [New disclosure]**

Under the proposed CRT REMIC structure, the conveyance of mortgage loans to a trust and issuance of certificates will represent the initial securitization of the mortgage loans. Any further assignment of certificates to a separate issuance vehicle would represent the initial resecuritization of the mortgage loans. Certificates issued pursuant to the proposed structure may be resecuritized to the same extent as, and may be commingled freely with, Fannie Mae Guaranteed Mortgage Pass-Through Certificates issued prior to \_\_\_\_\_.

### **Amendment [Revisions to existing disclosure]**

*No Consent Required*

[Third bullet point replaced with the following:]

- modify the trust documents to maintain the fixed investment trust status of a trust for federal income tax purposes or, in the event a REMIC election is made with respect to all or part of the assets comprising the trust fund of any trust, to maintain the REMIC status of any assets with respect to which the REMIC election is made, as applicable, as a REMIC for federal tax purposes; or

*100% Consent Required*

[Fourth bullet point replaced with the following:]

- take an action that materially increases the taxes payable in respect of a trust or affects the status of the trust as a fixed investment trust for federal income tax purposes or, in the event a REMIC election is made with respect to all or a part of the assets of the trust fund of any trust, affect the status of such assets as a REMIC for federal tax purposes.

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<sup>2</sup> The current Fannie Mae Single-Family MBS prospectus is available at [http://www.fanniemae.com/syndicated/documents/mbs/mbspros/SF\\_June\\_1\\_2016.pdf](http://www.fanniemae.com/syndicated/documents/mbs/mbspros/SF_June_1_2016.pdf).

## ANNEX B

Anticipated Additions and Revisions to the Fannie Mae Single-Family MBS Prospectus<sup>3</sup> disclosure regarding “Material Federal Income Tax Consequences” [Revised disclosure prepared by Dechert LLP; language marked to show changes from the currently-effective Prospectus]

### **REMIC Status [New disclosure on Prospectus cover]**

For federal income tax purposes, we may elect to treat a mortgage pool as being included in the assets of a “real estate mortgage investment conduit,” commonly referred to as a REMIC.

### **Summary—Federal Income Tax Consequences**

Each mortgage pool will be classified as a fixed investment trust. Each beneficial owner of a certificate will be treated as the owner of a pro rata undivided interest in each of the mortgage ~~loans included in that pool. Accordingly~~assets included in that pool. We may file an election to treat a pool as being included in the assets of a real estate mortgage investment conduit (“REMIC”). In that case, for federal income tax purposes the related certificate will represent ownership of a REMIC regular interest in respect of each mortgage loan in the pool. In any case, each owner will be required to include in income its pro rata share of the entire income from each mortgage loan in the pool, and generally will be entitled to deduct its pro rata share of the expenses of the trust, subject to the limitations described in this prospectus.

### **MATERIAL FEDERAL INCOME TAX CONSEQUENCES**

The certificates and payments on the certificates generally are subject to taxation. Therefore, you should consider the tax consequences of holding a certificate before you acquire one. The following discussion describes certain U.S. federal income tax consequences to beneficial owners of certificates. The discussion is general and does not purport to deal with all aspects of federal taxation that may be relevant to particular investors and is not written or intended to be used for the purpose of avoiding U.S. federal tax penalties. This discussion may not apply to your particular circumstances for various reasons including the following:

- This discussion reflects federal tax laws in effect as of the date of this prospectus. Changes to any of these laws after the date of this prospectus may affect the tax consequences discussed below.
- This discussion addresses only certificates acquired by beneficial owners at original issuance and held as capital assets (generally, property held for investment).
- This discussion does not address tax consequences to beneficial owners subject to special rules, such as dealers in securities, certain traders in securities, banks, tax-exempt organizations, life insurance companies, persons that hold certificates as part of a hedging

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<sup>3</sup> The current Fannie Mae Single-Family MBS prospectus is available at [http://www.fanniemae.com/syndicated/documents/mbs/mbspros/SF\\_June\\_1\\_2016.pdf](http://www.fanniemae.com/syndicated/documents/mbs/mbspros/SF_June_1_2016.pdf).

transaction or as a position in a straddle or conversion transaction, or persons whose functional currency is not the U.S. dollar.

- This discussion does not address tax consequences of the purchase, ownership or disposition of a certificate by a partnership. If a partnership holds a certificate, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership.
- This discussion may be supplemented by a discussion in any applicable prospectus supplement.
- This discussion does not address taxes imposed by any state, local or foreign taxing jurisdiction.

For these reasons, you should consult your own tax advisor regarding the federal income tax consequences of holding and disposing of certificates as well as any tax consequences arising under the laws of any state, local or foreign taxing jurisdiction.

For purposes of this discussion, the term “mortgage loan,” in the case of a participation interest, means the interest in the underlying mortgage loan represented by that participation interest; and in applying a federal income tax rule that depends on the origination date of a mortgage loan or the characteristics of a mortgage loan at its origination, the term “mortgage loan” means the underlying mortgage loan and not the participation interest.

### **Internal Revenue Service Guidance Regarding the Certificates**

In Revenue Ruling 84-10, 1984-1 C.B. 155, the Internal Revenue Service (“IRS”) set forth certain federal income tax consequences relating to investments in the certificates issued with respect to a pool. Pursuant to Revenue Ruling 84-10, a pool will not be classified as an association taxable as a corporation for federal income tax purposes. Instead, a pool will be classified as a fixed investment trust, and, under subpart E of part I of subchapter J of the Internal Revenue Code of 1986, as amended (the “Code”), each beneficial owner of a certificate will be considered to be the beneficial owner of a pro rata undivided interest in each of the mortgage loans included in that particular pool.

[We may file an election to treat a pool as being included in the assets of a REMIC. In that case, for federal income tax purposes the related certificate will represent beneficial ownership of a REMIC regular interest in respect of each mortgage loan in the pool. Unless we disclose otherwise, a REMIC election will be made with respect to each MBS pool issued on or after \[date\], with the exception of the following nine \(9\) prefixes: LA, CW, CR, CP, Z1, S1, S2, OL and OI. For purposes of the remainder of this discussion, the references to “mortgage loans” in a pool include REMIC regular interests with respect to those mortgage loans.](#)

Although Revenue Ruling 84-10 does not specifically address [pools containing REMIC regular interests or](#) participation interests in mortgage loans, other IRS pronouncements clearly indicate that the holdings of Revenue Ruling 84-10 are equally applicable to a certificate backed by a pool consisting (in whole or in part) of [REMIC regular interests or](#) participation interests. Revenue Ruling 84-10 also does not contemplate (i) the mandatory purchase of ARM loans from

pools pursuant to a borrower's exercise of an option to convert an ARM to a fixed-rate mortgage loan, (ii) the difference between the biweekly payments of interest received under biweekly loans from mortgagors and the monthly payments of interest made to beneficial owners of certificates, or (iii) the differences between the principal and interest amounts received from mortgagors under mortgage loans that provide for the daily accrual of interest and the monthly payments of principal and interest made to beneficial owners of certificates. However, our special tax counsel, Dechert LLP, has rendered an opinion to us that the conclusions of Revenue Ruling 84-10 will be applicable to [pools containing REMIC regular interests or participation interests in mortgage loans](#), ARM pools, biweekly mortgage pools and pools that include mortgage loans providing for the daily accrual of interest.

Revenue Ruling 84-10 does not address the treatment of a transfer of mortgage loans to a multiple lender pool such as a Fannie Majors pool. A transfer of mortgage loans to a Fannie Majors pool will be treated as a taxable exchange between the lender transferring the mortgage loans and the beneficial owners of certificates in the pool at the time of transfer. You should consult your own tax advisor regarding the federal income tax consequences of a transfer of mortgage loans to a Fannie Majors pool.

### **Application of Revenue Ruling 84-10**

Pursuant to the holdings of Revenue Ruling 84-10, a beneficial owner of a particular issuance of certificates must report on its federal income tax return its pro rata share of the entire income from each mortgage loan in that particular pool, consistent with the beneficial owner's method of accounting. [However, a beneficial owner of a certificate of a pool for which we file a REMIC election must report its share of income from the certificate using the accrual method of accounting, regardless of whether it otherwise reports income using a cash method of accounting.](#) The items of income from a mortgage loan include interest, original issue discount (discussed below), prepayment premiums, assumption fees and late payment charges, plus any amount paid by us as interest under our guaranty. A beneficial owner can deduct its pro rata share of the expenses of the trust as provided in section 162 or section 212 of the Code, consistent with its method of accounting and subject to the discussion below.

A beneficial owner must also allocate its basis in a certificate among the mortgage loans included in that pool in proportion to the relative fair market values of those mortgage loans. If the basis allocated to a mortgage loan is less than the principal amount of that mortgage loan, the beneficial owner may have market discount with respect to that mortgage loan, and if the basis exceeds the principal amount, the beneficial owner may have premium with respect to that mortgage loan. Market discount and premium are discussed below.

#### ***Original Issue Discount***

Certain mortgage loans may be issued with original issue discount ("OID") within the meaning of section 1273(a) of the Code. OID generally arises only with respect to ARM loans that provide for an incentive interest rate (sometimes referred to as a teaser rate) or mortgage loans, including ARM loans, that provide for the deferral of interest. If a mortgage loan is issued with OID, a beneficial owner must include the OID in income as it accrues, generally in advance of the receipt of cash attributable to such income. The descriptions set forth below in "—Market

Discount” and “—Premium” may not be applicable for mortgage loans issued with OID. [We do not intend to file a REMIC election with respect to any pool if the related certificate would be treated as having been issued with OID.](#) You should consult your own tax advisor regarding the accrual of market discount and premium on mortgage loans issued with OID.

### ***Market Discount***

A beneficial owner that acquires a mortgage loan for less than its principal amount generally has market discount in the amount of the difference between the principal amount and the beneficial owner’s basis in that mortgage loan. In general, three consequences arise if a beneficial owner acquires an interest in a mortgage loan with market discount. First, the beneficial owner must treat any principal payment with respect to a mortgage loan acquired with market discount as ordinary income to the extent of the market discount that accrued while such beneficial owner held an interest in that mortgage loan. Second, the beneficial owner must treat gain on the disposition or retirement of such a certificate as ordinary income under the circumstances discussed below in “—**Sales and Other Dispositions of Certificates.**” Third, a beneficial owner that incurs or continues indebtedness to acquire a certificate at a market discount may be required to defer the deduction of all or a portion of the interest on the indebtedness until the corresponding amount of market discount is included in income. Alternatively, a beneficial owner may elect to include market discount in income on a current basis as it accrues, in which case the three consequences discussed above will not apply. If a beneficial owner makes this election, the beneficial owner must also apply the election to all debt instruments acquired by the beneficial owner on or after the beginning of the first taxable year to which the election applies. A beneficial owner may revoke the election only with the consent of the IRS.

A beneficial owner must determine the amount of accrued market discount for a period using a straight-line method, based on the maturity of the mortgage loan, unless the beneficial owner elects to determine accrued market discount using a constant yield method. The IRS has authority to provide regulations for determining the accrual of market discount in the case of debt instruments, including mortgage loans, that provide for more than one principal payment, but has not yet issued such regulations. In addition, the legislative history to the Tax Reform Act of 1986 states that market discount on certain types of debt instruments may be treated as accruing in proportion to remaining accruals of original issue discount, if any, or if none, in proportion to remaining distributions of interest. You should consult your own tax advisor regarding the method a beneficial owner should use to determine accrued market discount.

Notwithstanding the above rules, market discount on a mortgage loan is considered to be zero if the discount is less than 0.25 percent of the principal balance of the mortgage loan multiplied by the number of complete years from the date the beneficial owner acquires an interest in the mortgage loan to the maturity of the mortgage loan (referred to as the market discount de minimis amount). The IRS has authority to provide regulations to adjust the computation of the market discount de minimis amount in the case of debt instruments, including mortgage loans, that provide for more than one principal payment, but has not yet issued such regulations. The IRS could assert, nonetheless, that the market discount de minimis amount should be calculated using the remaining weighted average

life of a mortgage loan rather than its final maturity. You should consult your own tax advisor regarding the ability to compute the market discount de minimis amount based on the final maturity of a mortgage loan.

### ***Section 1272(a)(6)***

Pursuant to regulations issued by Treasury, Fannie Mae is required to report OID and market discount in a manner consistent with section 1272(a)(6) of the Code. You should consult your own tax advisor regarding the effect of section 1272(a)(6) on the accrual of OID and market discount.

### ***Premium***

A beneficial owner that acquires a mortgage loan for more than its principal amount generally has premium with respect to that mortgage loan in the amount of the excess. In that event, the beneficial owner may elect to treat the premium as amortizable bond premium. This election is available only with respect to an undivided interest in a mortgage loan that was originated after September 27, 1985. If the election is made, a beneficial owner must also apply the election to all debt instruments the interest on which is not excludible from gross income (fully taxable bonds) held by the beneficial owner at the beginning of the first taxable year to which the election applies and to all fully taxable bonds thereafter acquired by the beneficial owner. A beneficial owner may revoke the election only with the consent of the IRS.

If a beneficial owner makes this election, the beneficial owner reduces the amount of any interest payment that must be included in the beneficial owner's income by the portion of the premium allocable to the period based on the mortgage loan's yield to maturity. Correspondingly, a beneficial owner must reduce its basis in the mortgage loan by the amount of premium applied to reduce any interest income. The amount of premium to be allocated among the interest payments on an ARM is determined by reference to an equivalent fixed-rate debt instrument constructed as of the date the beneficial owner acquires an interest in the ARM.

If a beneficial owner does not elect to amortize premium, (i) the beneficial owner must include the full amount of each interest payment in income, and (ii) the premium must be allocated to the principal distributions on the mortgage loan and, when each principal distribution is received, a loss equal to the premium allocated to that distribution will be recognized. Any tax benefit from premium not previously recognized will be taken into account in computing gain or loss upon the sale or disposition of the certificate. See “—**Sales and Other Dispositions of Certificates.**”

### ***Accrual Method Election***

A beneficial owner may elect to include in income its entire return on a mortgage loan (i.e., the excess of all remaining payments to be received on the mortgage loan over the amount of the beneficial owner's basis in the mortgage loan) based on the compounding of interest at a constant yield. Such an election for a mortgage loan with amortizable bond premium (or market discount) will result in a deemed election to amortize premium for all the beneficial owner's debt instruments with amortizable bond premium (or to accrue market discount currently for all the beneficial owner's debt instruments with market discount) as discussed above.



### ***Expenses of the Trust***

A beneficial owner's ability to deduct its share of the fee payable to the direct servicer, the fee payable to us for providing our guaranty and other expenses to administer the pool is limited under section 67 of the Code in the case of (i) estates and trusts, and (ii) individuals owning an interest in a certificate directly or through an investment in a pass-through entity (other than in connection with such individual's trade or business). Pass-through entities include partnerships, S corporations, grantor trusts, certain limited liability companies and non-publicly offered regulated investment companies, but do not include estates, nongrantor trusts, cooperatives, real estate investment trusts and publicly offered regulated investment companies.

Subject to limitations, a beneficial owner can deduct its share of these costs only to the extent that these costs, when aggregated with certain of the beneficial owner's other miscellaneous itemized deductions, exceed two percent of the beneficial owner's adjusted gross income. For this purpose, an estate or nongrantor trust computes adjusted gross income in the same manner as in the case of an individual, except that deductions for administrative expenses of the estate or trust that would not have been incurred if the property were not held in such trust or estate are treated as allowable in arriving at adjusted gross income.

In addition, section 68 of the Code may provide for certain limitations on itemized deductions otherwise allowable for a beneficial owner who is an individual. Further, a beneficial owner may not be able to deduct any portion of these costs in computing its alternative minimum tax liability.

### **Sales and Other Dispositions of Certificates**

Upon the sale, exchange or other disposition of a certificate, the beneficial owner generally will recognize gain or loss equal to the difference between the amount realized upon the disposition and the beneficial owner's adjusted basis in the certificate. The adjusted basis of a certificate generally will equal the cost of the certificate to the beneficial owner, increased by any amounts of original issue discount and market discount included in the beneficial owner's gross income with respect to the certificate, and reduced by distributions on the certificate previously received by the beneficial owner as principal and by any premium that has reduced the beneficial owner's interest income with respect to the certificate. Any such gain or loss generally will be capital gain or loss, except (i) as provided in section 582(c) of the Code (which generally applies to banks) or (ii) to the extent any gain represents original issue discount or accrued market discount not previously included in income (to which extent such gain would be treated as ordinary income). Any capital gain (or loss) will be long-term capital gain (or loss) if at the time of disposition the beneficial owner held the certificate for more than one year. The ability to deduct capital losses is subject to limitations.

The Taxpayer Relief Act of 1997 amended section 1271 of the Code to provide that amounts received by a beneficial owner on retirement of any mortgage loan of a natural person are considered to be amounts received in exchange therefor. The legislation applies to mortgage loans originated after June 8, 1997, and any interest in a mortgage loan acquired after June 8, 1997. The application of section 1271 to a retirement of a mortgage loan that was acquired at a

discount is unclear, and you should consult your own tax advisor regarding the application of section 1271 to a certificate in such a case.

## Medicare Tax

Certain non-corporate beneficial owners are subject to an increased rate of tax on some or all of their “net investment income,” which generally includes interest, OID and market discount realized on a certificate, and any net gain recognized upon a disposition of a certificate. You should consult your tax advisor regarding the applicability of this tax based on your particular circumstances.

## Special Tax Attributes

In Revenue Ruling 84-10, the IRS ruled on the status of the certificates under specific sections of the Code. In particular, the IRS ruled as follows:

- A certificate owned by a domestic building and loan association is considered as representing loans secured by an interest in real property within the meaning of section 7701(a)(19)(C)(v) of the Code, provided the real property underlying each mortgage loan is (or, from the proceeds of the mortgage loans, will become) the type of real property described in that section of the Code.
- A certificate owned by a real estate investment trust is considered as representing real estate assets within the meaning of section 856(c)(5)(B) of the Code, and the interest income is considered interest on obligations secured by mortgages on real property within the meaning of section 856(c)(3)(B) of the Code.

[The tax status of the certificates described above also will apply to pools containing REMIC regular interests and participation interests in mortgage loans.](#) If a certificate represents an interest in a pool that contains a cooperative share loan, an escrow mortgage loan, a buydown loan, a government mortgage loan, or a loan secured by a manufactured home, you should also consider the following tax consequences applicable to an undivided interest in those loans.

In the event that any mortgage loan has a loan-to-value ratio in excess of 100% (that is, the principal balance of any mortgage loan exceeds the fair market value of the real property securing the loan), the interest income on the portion of the mortgage loan in excess of the value of the real property will not be interest on obligations secured by mortgages on real property within the meaning of section 856(c)(3)(B) of the Code and such excess portion will not be a real estate asset within the meaning of section 856(c)(5)(B) of the Code. The excess portion should represent a “Government security” within the meaning of section 856(c)(4)(A) of the Code. For these purposes, we use the loan-to-value ratio of all loans at origination. If a pool contains a mortgage loan with a loan-to-value ratio in excess of 100%, a holder that is a real estate investment trust should consult its tax advisor concerning the appropriate tax treatment of such excess portion.

It is not certain whether or to what extent a mortgage loan with a loan-to-value ratio in excess of 100%, [or a REMIC regular interest backed by such a mortgage loan,](#) qualifies as a loan secured by an interest in real property for purposes of ~~sections~~ [sections](#) 7701(a)(19)(C)(v) [and](#)

[7701\(a\)\(19\)\(C\)\(xi\) of the Code, as applicable.](#) Even if the property securing the mortgage loan does not meet this test, the certificates will be treated as “obligations of a corporation which is an instrumentality of the United States” within the meaning of section 7701(a)(19)(C)(ii) of the Code. Thus, the certificates will be a qualifying asset for a domestic building and loan association.

A mortgage loan with a loan-to-value ratio in excess of 125% is not a “qualified mortgage” within the meaning of section 860G(a)(3) of the Code. Accordingly, if a pool contains a mortgage loan with a loan-to-value ratio in excess of 125%, the certificates that evidence a beneficial ownership interest in the pool will not be a suitable investment for a ~~real-estate mortgage investment conduit~~ (“REMIC”).

### ***Cooperative Share Loans***

The IRS has ruled that a cooperative share loan will be treated as a loan secured by an interest in real property, within the meaning of section 7701(a)(19)(C)(v) of the Code, provided that the dwelling unit that the cooperative’s stock entitles the tenant-shareholder to occupy is to be used as a residence. The IRS also has ruled that stock in a cooperative qualifies as an interest in real property within the meaning of section 856(c)(5)(C) of the Code. Accordingly, interest on cooperative share loans qualifies as interest on obligations secured by mortgages on interests in real property for purposes of section 856(c)(3)(B) of the Code.

### ***Escrow Mortgage Loans***

In certain cases, a mortgage loan may be secured by additional collateral consisting of an escrow account held with a financial institution, referred to as an escrow mortgage loan. The escrow account could consist of an interest rate buydown account that meets the requirements of our Selling Guide or any other escrow account described in the prospectus supplement. A beneficial owner’s investment in an escrow mortgage loan generally should be treated as a loan secured by an interest in real property within the meaning of ~~section~~[sections](#) 7701(a)(19)(C)(v) [and 7701\(a\)\(19\)\(C\)\(xi\) of the Code, as applicable](#), provided the escrow account does not represent an account with the beneficial owner. In addition, an investment in an escrow mortgage loan by a real estate investment trust generally should be treated in its entirety as a real estate asset within the meaning of section 856(c)(5)(B) of the Code, provided the fair market value of the real property securing the escrow mortgage loan equals or exceeds the principal amount of such escrow mortgage loan at the time the real estate investment trust makes a commitment to acquire a certificate. Because of uncertainties regarding the tax treatment of escrow mortgage loans, you should consult your own tax advisor concerning the federal income tax treatment of investments in escrow mortgage loans.

### ***Buydown Loans***

Sometimes a lender, builder, seller or other third party may provide the funds for the interest rate buydown accounts that secure certain escrow mortgage loans, sometimes referred to as buydown loans. Under our Selling Guide, the borrower is liable for the entire payment on a buydown loan, without offset by any payments due from the buydown account. Accordingly, we plan to treat buydown loans entirely as the obligation of the borrower.

The IRS could take the position, however, that a buydown loan should be treated as if the borrower were obligated only to the extent of the net payment after application of the interest rate buydown account. If the IRS were able to maintain this position successfully, a beneficial owner of a buydown loan would be treated as holding two instruments: one representing the lender's rights with respect to the buydown account, and the other representing the borrower's debt to the extent of the net payment by the borrower. With respect to the instrument represented by the borrower's debt, this treatment would require the beneficial owner to accelerate the recognition of a portion of the interest payable after the buydown period. Moreover, during the buydown period and to the extent of the buydown account, the rulings described above regarding sections 856(c)(3)(B), 856(c)(5)(B) and 7701(a)(19)(C)(v) of the Code would be inapplicable. Because of uncertainties regarding the tax treatment of buydown loans, you should consult your own tax advisor concerning the federal income tax treatment of investments in buydown loans.

### ***Government Mortgage Loans***

Because information generally is not available with respect to the loan-to-value ratios of government mortgage loans, no representations can be made regarding the qualification of such loans under sections 856(c)(3)(B), 856(c)(5)(B), 7701(a)(19)(C)(v) and 7701(a)(19)(C)(~~v~~xi) of the Code.

### ***Loans Secured by Manufactured Homes***

For certain purposes of the Code, a mortgage loan secured by a manufactured home is treated as secured by an interest in real property if the manufactured home satisfies the conditions set forth in section 25(e)(10) of the Code. That section requires a manufactured home to have a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and to be of a kind customarily used at a fixed location. Although Revenue Ruling 84-10 does not specifically refer to mortgage loans secured by manufactured homes, the conclusions discussed above regarding sections 856(c)(3)(B), 856(c)(5)(B) ~~and~~, 7701(a)(19)(C)(v) and (xi) of the Code should be applicable to a beneficial owner's investment in a mortgage loan that is secured by property described in section 25(e)(10). Unless we state otherwise in the prospectus supplement or use a special pool prefix for pooling mortgage loans secured by manufactured homes, the conditions of section 25(e)(10) will be satisfied.

### **Mortgage Loan Servicing**

The IRS issued guidance on the tax treatment of mortgage loans in cases in which the fee retained by the direct servicer of the mortgage loans exceeds what is established under tax law to be reasonable compensation for the services to be performed. This guidance is directed primarily to servicers and, in most cases, should not have a significant effect on beneficial owners of mortgage loans.

Under the IRS guidance, if a servicing fee on a mortgage loan is determined to exceed reasonable compensation, the payments of the excess servicing fee are treated as a series of stripped coupons and the mortgage loan is treated as a stripped bond within the meaning of section 1286 of the Code. In general, if a mortgage loan is treated as a stripped bond, any discount with respect to that mortgage loan will be treated as original issue discount. Any

premium with respect to such a mortgage loan may be treated as amortizable bond premium regardless of the date the mortgage loan was originated, because a stripped bond is treated as originally issued on the date a beneficial owner acquires the stripped bond. See “—**Application of Revenue Ruling 84-10— Premium**” above. In addition, the excess portion of servicing compensation will be excluded from the income of owners and thus will not be subject to the limitations on the deductibility of miscellaneous itemized deductions. See “—**Application of Revenue Ruling 84-10—Expenses of the Trust**” above.

A mortgage loan is effectively not treated as a stripped bond by beneficial owners, however, if the mortgage loan meets either the 100 basis point test or the de minimis test. A mortgage loan meets the 100 basis point test if the total amount of servicing compensation on the mortgage loan does not exceed reasonable compensation for servicing by more than 100 basis points. A mortgage loan meets the de minimis test if (i) the discount at which the mortgage loan is acquired is less than 0.25 percent of the remaining principal balance of the mortgage loan multiplied by its weighted average remaining life; or (ii) in the case of wholly self-amortizing mortgage loans, the acquisition discount is less than 1/6 of one percent times the number of whole years to final stated maturity. In addition, servicers are given the opportunity to elect to treat mortgage servicing fees up to a specified number of basis points (which depends on the type of mortgage loans) as reasonable servicing. No guidance has been provided as to the effect, if any, of such safe harbors and any elections thereunder on beneficial owners of mortgage loans.

The IRS guidance contains a number of ambiguities. For example, it is not clear whether the rules described above are to be applied on an individual loan or an aggregate basis. You should consult your own tax advisor about the IRS guidance and its application to investments in the certificates.

### **Information Reporting and Backup Withholding**

For each distribution, we will post on our website information that will allow beneficial owners to determine (i) the portion of such distribution allocable to principal and to interest, (ii) the amount, if any, of OID and market discount and (iii) the administrative expenses allocable to such distribution. In Notice 2008-77, 2008-40 I.R.B., [814](#), the IRS provided an exception from reporting certain modifications of mortgage loans held by a fixed investment trust if a guaranty arrangement compensates the trust for any shortfalls that would otherwise be experienced as a result of the modification. Based on this IRS guidance, we have determined that modifications of certain non-performing loans under terms specified in the trust documents are not required to be reported.

Payments of interest and principal, as well as payments of proceeds from the sale of certificates, may be subject to the backup withholding tax under section 3406 of the Code if the recipient of the payment is not an exempt recipient and fails to furnish certain information, including its taxpayer identification number, to us or our agent, or otherwise fails to establish an exemption from such tax. Any amounts deducted and withheld from such a payment would be allowed as a credit against the beneficial owner’s federal income tax. Furthermore, certain penalties may be imposed by the IRS on a holder or owner who is required to supply information but who does not do so in the proper manner.

## Foreign Investors

Additional rules apply to a beneficial owner that is not a U.S. Person and that is not a partnership (a “Non-U.S. Person”). “U.S. Person” means a citizen or resident of the United States, a corporation (or other entity taxable as a corporation) created or organized in or under the laws of the United States or any state or the District of Columbia, an estate the income of which is subject to U.S. federal income tax regardless of the source of its income, or a trust if a court within the United States can exercise primary supervision over its administration and at least one U.S. Person has the authority to control all substantial decisions of the trust.

Subject to the discussion of FATCA, as defined below, payments on a certificate made to, or on behalf of, a beneficial owner that is a Non-U.S. Person generally will be exempt from U.S. federal income and withholding taxes, provided the following conditions are satisfied:

- the beneficial owner does not hold the certificate in connection with its conduct of a trade or business in the United States;
- the beneficial owner is not, with respect to the United States, a personal holding company or a corporation that accumulates earnings in order to avoid U.S. federal income tax;
- the beneficial owner is not a U.S. expatriate or former U.S. resident who is taxable in the manner provided in section 877(b) of the Code;
- the beneficial owner is not an excluded person (i.e., a 10-percent shareholder of Fannie Mae within the meaning of section 871(h)(3)(B) of the Code or a controlled foreign corporation related to Fannie Mae within the meaning of section 881(c)(3)(C) of the Code);
- the beneficial owner signs a statement under penalties of perjury certifying that it is a Non-U.S. Person and provides its name, address and taxpayer identification number (a “Non-U.S. Beneficial Ownership Statement”);
- the last U.S. Person in the chain of payment to the beneficial owner (the withholding agent) receives such Non-U.S. Beneficial Ownership Statement from the beneficial owner or a financial institution holding on behalf of the beneficial owner and does not have actual knowledge that such statement is false;
- the certificate represents an undivided interest in a pool of mortgage loans all of which were originated after July 18, 1984; and
- the Non-U.S. Person (and each foreign intermediary and foreign flow-through entity through which the Non-U.S. Person holds its certificate) complies with FATCA (as discussed below).

That portion of interest income of a beneficial owner who is a Non-U.S. Person on a certificate that represents an interest in one or more mortgage loans originated before July 19, 1984 will be subject to a U.S. withholding tax at the rate of 30 percent or lower treaty rate, if applicable. Regardless of the date of origination of the mortgage loans, backup withholding will not apply to

payments made to a beneficial owner that is a Non-U.S. Person if the beneficial owner or a financial institution holding on behalf of the beneficial owner provides a Non-U.S. Beneficial Ownership Statement to the withholding agent.

A Non-U.S. Beneficial Ownership Statement may be made on an IRS Form W-8BEN or Form W-8BEN-E, as applicable, or a substantially similar substitute form. The beneficial owner or financial institution holding on behalf of the beneficial owner must inform the withholding agent of any change in the information on the statement within 30 days of such change.

Sections 1471 through 1474 of the Internal Revenue Code (commonly known as “FATCA”) generally impose withholding of 30% on “withholdable payments” to certain foreign entities (including financial intermediaries), unless certain information reporting, diligence and other requirements have been satisfied. For this purpose, withholdable payments include U.S.-source interest and gross proceeds (including principal payments) from the sale or other disposition of property that can produce U.S.-source interest. Payments on the certificates, other than payments in respect of any sales or other dispositions of property occurring before January 1, 2019, will be treated as withholdable payments. To receive the benefit of an exemption from FATCA withholding tax, you must provide to the withholding agent a properly completed Form W-8BEN or W-8BEN-E or other applicable form evidencing such exemption. Non-U.S. Persons should consult their own tax advisors regarding the potential application and impact of this legislation based on their particular circumstances.

## ANNEX C

### ANTICIPATED REVISIONS TO THE 2016 SINGLE-FAMILY MBS MASTER TRUST AGREEMENT<sup>4</sup>

#### **New Section 2.1(6)(b) – "REMIC Election"**

Upon instruction from the Issuer, the Trustee will make an election under Section 860D of the Code with respect to all or a portion of the assets comprising the Trust Fund as to any Trust and include in such REMIC election all or a portion of the assets comprising the Trust Fund of other Trusts, together with any "reserve fund asset" (as defined in Section 860G(a)(7) of the Code and the applicable Treasury Regulations); provided, however, that no such election will (i) cause any Trust to be treated as other than a fixed investment trust under the Code and applicable Treasury Regulations as set forth in Subsection 2.1(6)(a) or (ii) adversely affect the federal income tax characterization of the Certificates as described in the Prospectus. With respect to any such REMIC election and the assets subject to such REMIC election, the Trustee will take any action, or cause each Trust with assets subject to such REMIC election to take any action, necessary or appropriate to establish and maintain the REMIC status of any assets with respect to which the REMIC election is made. The Prospectus for each Trust will indicate whether such a REMIC election has been or will be made.

#### **New Section 2.1(6)(c) – "Assignment of Principal and Interest and Acceptance of Beneficial Interest"**

Upon instruction from the Issuer, the Trustee will assign to one or more separate trusts established by the Issuer beneficial interests in principal and interest payments on the Mortgage Loans comprising the Trust Fund as to any Trust (net of the applicable Servicing Fees), in exchange for beneficial interests in the same principal and interest payments on the applicable Mortgage Loans (net of a portion of the applicable Guaranty Fees).

#### **Revised Section 14.3(b) – Amendments Permissible without Consent of Holders**

(b) to modify, eliminate or add to the provisions of the Trust Documents to the extent necessary to maintain the qualification of any Trust as a fixed investment trust under the Code, as it may then be in effect, or, in the event a REMIC election is made with respect to all or part of the assets comprising the Trust Fund of any Trust, to maintain the REMIC status of any assets with respect to which the REMIC election is made, each as evidenced by an Opinion of Counsel satisfactory to the Trustee; or

#### **Revised Section 14.4(2)(c) – Amendments Permissible with 100% Consent of Holders**

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<sup>4</sup> The 2016 Single-Family MBS Master Trust Agreement is available at: [http://www.fanniemae.com/resources/file/mbs/pdf/singlefamilytrustagreement\\_June2016.pdf](http://www.fanniemae.com/resources/file/mbs/pdf/singlefamilytrustagreement_June2016.pdf).



(c) affect the status of the Trust as a fixed investment trust for federal tax purposes, or, in the event a REMIC election is made with respect to all or a part of the assets of the Trust Fund of any Trust, affect the status of such assets as a REMIC for federal tax purposes, or otherwise have the effect of materially increasing taxes payable in respect of that Trust.