**Center for Responsible Lending**

**Consumer Federation of America**

**The Leadership Conference on Civil and Human Rights**

**NAACP**

**National Association of Real Estate Brokers**

**National Community Stabilization Trust**

**National Fair Housing Alliance**

**National Housing Conference**

**National Urban League**

# Comment to the Federal Housing Finance Agency on 2021 Enterprise Housing Goals Proposed Rule

**12 CFR Part 1282, RIN 2590-AB04, Document Number 2020-15959**

**October 13, 2020**

**Submitted via FHFA website**

On behalf of the undersigned consumer, civil rights, and housing organizations, we would like to thank you for the opportunity to comment on the affordable housing goals for Fannie Mae and Freddie Mac (the GSEs). In exchange for government support, the GSEs have an explicit public interest mission. This mission is foundational and part of their charters – the GSEs' very reason for existing.[1] The mission includes promoting access to mortgage credit to underserved borrowers, serving a countercyclical role in the mortgage market, and FHFA's duty to reasonably support the safety and soundness of the GSEs and U.S. housing finance system. The affordable housing goals are a key metric to ensure that the GSEs are striving to meet their mission obligations. The housing goals also push the GSEs to develop and market products that support the primary market to better serve underserved borrowers.

We contend that the GSEs should focus explicitly on addressing racial homeownership gaps; marginal improvements are insufficient given the GSEs' charters that cite the GSEs' responsibility to underserved communities and borrowers of color, including to "minority census tracts."[2] FHFA should significantly increase the GSEs' affordable housing goals, particularly the low-income purchase goal. Furthermore, FHFA and the GSEs should take measures that make rate term refinancing more available to lower wealth borrowers and borrowers of color. In addition to bolstering access to responsible mortgage credit, the GSEs should also take all possible actions to mitigate foreclosures and to support affordable loan modifications for homeowners who have been hit hard by the COVID-19 pandemic and recession. FHFA and the GSEs should do more to provide guidance to servicers to help inform borrowers of forbearance options and ensure that borrowers can access relief.[3]

FHFA proposes to set benchmark levels for the single-family and multifamily goals only for calendar year 2021 and to keep the levels the same as those for the 2018-2020 period. FHFA states it will subsequently conduct a new round of notice and comment rulemaking to establish

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[1] *See* 12 U.S.C. § 1716; 12 U.S.C. § 1451. The legislated purpose of the GSEs, as stated in their charters, is to:

1. provide stability in the secondary market for residential mortgages;
2. respond appropriately to the private capital market;
3. provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing;
4. promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing;
5. manage and liquidate federally owned mortgage portfolios in an orderly manner, with a minimum of adverse effect upon the residential mortgage market and minimum loss to the Federal Government.

[2] 12 U.S.C. § 4561. Additionally, section 4564 describes a focus on serving "minority census tracts."

[3] Fannie Mae, COVID-19: *The Need for Consumer Outreach and Home Purchase/Financing Digitization*, National Housing Survey (August 2020), available at https://capmrkt.fanniemae.com/resources/file/research/housingsurvey/pdf/covid19-consumer-impact-nhs-q22020.pdf (finding that roughly one-fifth of consumers are concerned about imminent financial distress, but most are unfamiliar with mortgage or rent relief options; this is particularly true for lower-income borrowers and borrowers of color).

benchmark levels for 2022 and beyond. Given that FHFA did not conduct its typical mortgage market study in setting the goals for this rulemaking, we urge FHFA to provide greater transparency into the goal-affected markets by conducting additional analysis and making more data publicly available. This is particularly important now, during an unprecedented health pandemic that created an economic crisis.

We reiterate our prior call for FHFA to increase the low-income purchase goal to 27%. But at a minimum, as FHFA plans for future rulemakings, the agency should increase the low-income purchase goal to at least 27% in 2022 and 2023. Additionally, as described in detail in our comment on the 2018-2020 goals, the GSEs should be required to meet *both* the benchmark and the market metrics.[4] Also, it should be noted that the GSEs' own policies obstruct them from increasing the goals and these policies should be modified. Lastly, FHFA should monitor the low-income areas home purchase subgoal to ensure policy objectives are met and that the subgoal does not facilitate displacement of lower-income families.

## I. FHFA and the GSEs Have a Public Mission that Includes the Duty to Reach Underserved Communities

Under the Housing and Economic Recovery Act of 2008 (HERA), FHFA and the GSEs have a duty to ensure that borrowers from traditionally underserved communities will have access to the mortgage market. The GSEs' single-family affordable housing goals – particularly the purchase of loans from low and very low-income borrowers – are essential to encourage affordable homeownership opportunities. The GSEs are obligated to serve the entire market and ensure that underserved borrowers, including Black and Brown homebuyers, first time homebuyers, and lower wealth families, have access to responsible forms of mortgage credit. Homeownership is a critical component of family wealth, particularly for low-income families and people of color, and has been shown to explain much of the observed racial wealth gap. There continues to be a stark disparity in the homeownership rate between whites and people of color, with the white homeownership rate at 73% while the rate is 44% and 48% for Black and Latino borrowers respectively.[5] As a result of homeownership disparities, discrimination, and lack of fair access, the racial wealth gap continues to grow. The median white family has 10 times the wealth of the median Black family and 8 times the wealth of the median Latino family.[6] Additionally, Black

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[4] Center for Responsible Lending, *Comment Letter to FHFA*, 2018-2020 Enterprise Housing Goals, available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-fhfa-comment-affordable-housing-goals-feb2018.pdf.

[5] *See* Jung Hyun Choi, Alanna McCargo, Michael Neal, Laurie Goodman and Caitlin Young, *Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets*, Urban Institute (November 2019), available at https://www.urban.org/sites/default/files/publication/101160/explaining_the_black-white_homeownership_gap_2.pdf; Sarah Strochak, Caitlin Young and Alanna McCargo, *Mapping the Hispanic Homeownership Gap*, Urban Institute (August 2019), available at https://www.urban.org/urban-wire/mapping-hispanic-homeownership-gap.

[6] Asset Building Policy Network, *The Hispanic-White Wealth Gap Infographic* (September 2019), available at https://prosperitynow.org/sites/default/files/resources/ABPN_Hispanic_White_Racial%20Wealth%20Gap%20Infog

Americans unfairly pay more to be homeowners as the outcome of public policy decisions. The overall differences in mortgage interest payments, mortgage insurance premiums, and property taxes total $13,464 over the life of the loan, which amounts to $67,320 in lost retirement savings for Black homeowners.[7]

Many lenders and the GSEs have limited lending and increased prices for borrowers with lower credit scores and/or lower down payments. Indeed, according to the Urban Institute, if credit standards were more reasonable, more than 6 million additional conventional mortgages could have been made since 2009, and CoreLogic estimates that 250,000 of those loans annually would have gone to borrowers of color.[8] Borrowers of color, low- and moderate-income families, and first-time homebuyers tend to have both lower FICO scores and fewer resources to put towards a down payment due to lower levels of family wealth, which in turn is due in large part to generations of discrimination. Historically, federally sanctioned discrimination in lending provided credit access to whites and wealthier Americans while excluding others, preventing generational wealth building. More recently, in the lead up to the 2008 housing crisis, predatory loan products were targeted to communities of color, stripping wealth and depressing credit scores.[9] As a result, eligibility limits and pricing based on FICO scores and loan-to-value (LTV) ratios serve as barriers to homeownership for many borrowers.

Preceding the COVID-19 pandemic, the market experienced record low delinquencies and defaults and credit was unnecessarily tight.[10] Zero default risk is not a reasonable goal and there is room to safely expand the credit box. Creditworthy borrowers of color continue to be

raphic_Final.pdf; Nick Noel, Duwain Pinder, Shelley Stewart III, and Jason Wright, *The Economic Impact of Closing the Racial Wealth Gap*, McKinsey & Company (August 2019), Exhibit 1 at p. 5, available at https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap.

[7] Michelle Aronowitz, Edward L. Golding, and Jung Hyun Choi, *The Unequal Costs of Black Homeownership*, MIT Golub Center for Finance and Policy (Oct. 1, 2020), available at http://gcfp.mit.edu/wp-content/uploads/2020/10/Mortgage-Cost-for-Black-Homeowners-10.1.pdf.

[8] Laurie Goodman, Jun Zhu, and Bing Bai, *Overly Tight Credit Killed 1.1 Million Mortgages in 2015*, Urban Institute (Nov. 21, 2016), available at https://www.urban.org/urban-wire/overly-tight-credit-killed-11-millionmortgages2015 (stating that lenders would have issued 6.3 million additional mortgages between 2009 and 2015 if lending standards had been more reasonable); National Association of Real Estate Brokers, *Much Left to Do For Homeownership*, available at http://www.nareb.com/50-years-of-struggle-realizing-democracyinhousing-2/.

[9] Debbie Gruenstein Bocian, Wei Li, Carolina Reid, and Roberto G. Quercia, *Lost Ground: Disparities in Mortgage Lending and Foreclosures*, Center for Responsible Lending (2011), available at http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-2011.pdf (finding that Black Americans and Latinos were consistently more likely to receive high-risk loan products, even after accounting for income and credit status); Center for Responsible Lending, *The Spillover Effects of Foreclosures* (Aug. 19, 2013), available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2013-crl-research-update-foreclosure-spillover-effects-final-aug-19-docx.pdf (finding that communities of color have lost or will lose $1.1 trillion in home equity as a result of spillover from homes that have started the foreclosure process); Kenneth Brevoort and Cheryl Cooper, *Foreclosure's Wake: The Credit Experiences of Individuals Following Foreclosure*, The Federal Reserve Board (2010), available at http://www.federalreserve.gov/pubs/feds/2010/201059/index.html.

[10] *See, e.g.*, Laurie Goodman, *Squeaky-clean Loans Lead to Near-Zero Borrower Defaults—and That's Not a Good Thing*, Urban Institute (Aug. 30, 2016), available at https://www.urban.org/urban-wire/squeaky-clean-loans-lead-near-zero-borrower-defaults-and-not-good-thing.

underserved in the mortgage market. For example, research from the Urban Institute and Freddie Mac showed that between 1.7 million and 3 million Black individuals are mortgage ready yet remain outside of the system.[11] Moreover, in 2018, there were 4.9 million mortgage-ready Latino millennials across the U.S.[12] Still, only 3.5% of the GSEs' loan purchases are for mortgages made to Black borrowers and 9.2% represent Latino borrowers.[13] These percentages remain relatively unchanged from previous years (except for the period when the GSEs were purchasing subprime MBSs), reflecting little to no improvement in access to credit for underserved groups. Demographic projections for the United States point to future increases in the population shares of Blacks and Latinos, making the need to serve these groups increasingly important for the health and future growth of the housing market.[14] Over the past decade, Latinos have accounted for over 40% of all household formation growth and for 58% of all population growth.[15]

The failure to lend to communities of color hurts the economy. According to a recent study by Citi, Black loan denials cost the mortgage market $218 billion over the past 20 years and the bank estimates that we could grow the economy by $5 trillion if the racial wealth gap is closed.[16] McKinsey and Company estimates that addressing historic and ongoing discrimination for Black Americans could add up to $1.5 trillion dollars to the economy of the United States and increase the GDP between 4 and 6 percent.[17] FHFA and the GSEs should invest as much effort as

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[11] *See* Alanna McCargo, Jung Hyun Choi, and Edward Golding, *Building Black Homeownership Bridges: A FivePoint Framework for Reducing the Racial Homeownership Gap*, Urban Institute, at p. 8 (May 2019), available at https://www.urban.org/sites/default/files/publication/100204/building_black_ownership_bridges_1.pdf; Urban Institute, Sunset Seminar, *Barriers to Accessing Homeownership* (Jan. 30, 2019), available at https://www.urban.org/sites/default/files/2019/02/01/1.30.19_hfpc_master_deck.pdf; Laurie Goodman, Alanna McCargo, Edward Golding, Bing Bai, and Sarah Strochak, *Barriers to Accessing Homeownership: Down Payment, Credit, and Affordability*, Urban Institute, at p. 20 (September 2018), available at https://www.urban.org/sites/default/files/publication/99028/barriers_to_accessing_homeownership_2018_4.pdf; Freddie Mac, *Industry Insight: Expanding Homeownership to the Millennial Market* (June 22, 2017), available at https://sf.freddiemac.com/articles/insights/industry-insight-expanding-homeownership-to-the-millennial-market.

[12] The Resilience of Hispanic Homebuyers, MReport (Aug. 11, 2020), available at https://themreport.com/daily-dose/08-11-2020/the-resilience-of-hispanic-homebuyers.

[13] National Fair Housing Alliance analysis of data from Lending Patterns (2020).

[14] Jonathan Vespa, Lauren Medina, and David M. Armstrong, *Demographic Turning Points for the United States: Population Projections for 2020 to 2060*, Current Population Reports, U.S. Census Bureau, Table 3 (2020), available at https://www.census.gov/content/dam/Census/library/publications/2020/demo/p25-1144.pdf. See also Joint Center for Housing Studies, *The State of the Nation's Housing*, at p. 3 (2013) (stating that "[m]inorities— and particularly younger adults—will also contribute significantly to household growth in 2013–23, accounting for seven out of ten net new households. An important implication of this trend is that minorities will make up an ever larger share of potential first-time homebuyers.").

[15] U.S. Census Bureau, PEPALL6N Geography-United States Year-July 1, 2018 Hispanic Origin-Hispanic: Annual Estimates of the Resident Population by Sex, Single Year of Age, Race, and Hispanic Origin for the United States: April 1, 2010 to July 1, 2018 (June 2019).

[16] Citi, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.* (Sept. 2020), available at https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D.

[17] Nick Noel, Duwain Pinder, Shelley Stewart III, and Jason Wright, *The Economic Impact of Closing the Racial Wealth Gap*, McKinsey & Company (Aug. 2019), Exhibit 2 at p. 6, available at

possible to ensuring access to responsible credit for more communities, including by setting more robust goals.

## II. FHFA Should Provide Greater Transparency into the Goal-Affected Markets by Making Additional Data Publicly Available

FHFA states that economic uncertainty related to the COVID-19 national pandemic necessitates setting the same 2018-2020 housing goals benchmarks as those for the year 2021. In previous goal establishment cycles, FHFA provided a detailed analysis to forecast the size of the affordable mortgage market.[18] However, in the proposed rule, FHFA does not provide housing data or a market analysis that would shed light on the impact of uncertainty on the housing market.

We acknowledge that the COVID-19 pandemic has created unprecedented public health and economic uncertainty. However, we urge FHFA to provide further explanation on why it could not conduct the study estimating the size of the affordable mortgage market without delay. Specifically, FHFA should describe what data is missing or is uncertain. Transparency regarding why the study could not be completed at this time would be helpful in determining how the study will be treated in future goal setting, particularly for 2022 and 2023. We should note that Fannie Mae, which is regulated by the FHFA, produced its Annual Survey of Housing providing insight into how consumers are experiencing the crisis. Further, the Federal Reserve continued forward with producing the Survey of Consumer Finances while supporting the mortgage market through the pandemic.

Additionally, HERA requires several variables to be considered in setting the housing goals. FHFA should provide data and analysis on as many of these factors as possible, even if there is uncertainty regarding particular aspects:

(i) National housing needs;
(ii) Economic, housing, and demographic conditions, including expected market developments;
(iii) The performance and effort of the GSEs toward achieving the housing goals under this section in previous years;
(iv) The ability of the GSE to lead the industry in making mortgage credit available;
(v) Such other reliable mortgage data as may be available;
(vi) The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described in subsection (a), relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively;

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https://www.mckinsey.com/~/media/McKinsey/Industries/Public%20Sector/Our%20Insights/The%20economic%20impact%20of%20closing%20the%20racial%20wealth%20gap/The-economic-impact-of-closing-the-racial-wealth-gap-final.pdf.

[18] Federal Housing Finance Agency, *The Size of the Affordable Mortgage Market: 2018-2020 GSE Single-Family Housing Goals* (January 25, 2018), available at https://www.fhfa.gov/PolicyProgramsResearch/Research/PaperDocuments/Market-Estimates_2018-2020.pdf.

(vii) The need to maintain the sound financial condition of the GSEs.[19]

In its study, FHFA should include the GSEs' progress towards meeting their 2020 benchmark goals, as well as an analysis of the goal-affected markets and opportunities to serve more borrowers. The analysis should provide demographic information, including borrower race, ethnicity, income, and credit characteristics (e.g., credit score, LTV). Such analysis should be published for the benefit of policymakers and the public.

Furthermore, FHFA has created the Division of Research and Statistics to strengthen its data collection and analytical capabilities, permitting FHFA to understand, in real time, how circumstances have changed over the course of the COVID-19 crisis. We concur with UnidosUS's comment letter that the agency should use this capability to implement new measures to track the progress of GSE loans to borrowers of color. We also concur with NCRC's comment letter describing how FHFA should provide more frequent information to the public on the GSEs' loan purchases in the goal-targeted markets, as well as the affirmative steps the GSEs are taking to address gaps in access and affordability that may be developing in these markets as a result of the COVID-19 pandemic. FHFA should also conduct fair lending assessments to determine if the gaps in access trigger enforcement of any of the nation's fair housing and lending laws.

## III. FHFA Should Increase the Low-Income Purchase Goal

FHFA and the GSEs should act swiftly to address racial homeownership and wealth gaps. As research demonstrates, there are millions of mortgage-ready borrowers of color that remain outside the system.[20] Moreover, the single-family purchase goals have not significantly changed since 2015. Historic performance under a range of credit and business conditions shows that the GSEs are able to meet higher goals under a variety of different housing market conditions. Figure 1 shows that in nearly every year from 2001 to 2012 (other than once for Fannie Mae and twice for Freddie Mac) and then again in 2018, the purchases of Fannie and Freddie exceeded the 24% benchmark proposed by FHFA.

[19] 12 U.S.C. § 4562.

[20] *See supra*, notes 11 and 12.

**Figure 1: Low Income Home Purchase Historical Performance 2001-2018**[21]

| | Fannie Performance | Freddie Performance |
|---|---|---|
| 2001 | 24.60% | 24.30% |
| 2002 | 27.00% | 24.90% |
| 2003 | 29.00% | 24.90% |
| 2004 | 29.10% | 24.80% |
| 2005 | *Data unavailable* | |
| 2006 | 27.70% | 22.10% |
| 2007 | 26.00% | 24.60% |
| 2008 | 23.10% | 24.30% |
| 2009 | 25.50% | 25.40% |
| 2010 | 25.10% | 26.80% |
| 2011 | 25.80% | 23.30% |
| 2012 | 25.60% | 24.40% |
| 2013 | 23.80% | 21.80% |
| 2014 | 23.50% | 21.00% |
| 2015 | 23.50% | 22.30% |
| 2016 | 22.90% | 23.80% |
| 2017 | 25.50% | 23.20% |
| 2018 | 28.20% | 25.80% |

FHFA should not keep the benchmark level artificially low. Given the GSEs' prior success, it is reasonable to believe the GSEs could meet higher benchmark levels going forward. CRL and other organizations have previously called for the low-income purchase goal to be increased from 24% to 27%. We reiterate that call now. As the country experienced during the Great Recession and the current COVID-19 crisis, private markets tend to retract during times of stress, serving only borrowers with the most pristine credit profiles, often pricing out borrowers with lower wealth.[22] In a time of crisis, the GSEs have even more of a duty to serve the entire market, including meeting and surpassing the affordable housing goals. Furthermore, borrowers should receive the benefit of more affordable homeownership at a time that interest rates are at historic

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[21] Percentages calculated by FHFA for 2006-2018. *See* Single-Family Housing Goals Performance 2010-2018, available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Pages/Fannie-Mae-and-Freddie-Mac-Housing-Goals-Performance.aspx; Table 6 for 2006-2013 data available at https://www.fhfa.gov/SupervisionRegulation/Rules/RuleDocuments/Enterprise_Goals_Proposed_Rule_8-29-2014.pdf and Table 1 for 2014-2016 data available at https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/2018-2020-Enterprise-Housing-Goals-Proposed-Rule.aspx. CRL calculated percentages for 2001-2004 from data in Tables 5a and 5b, available at https://www.huduser.gov/portal/datasets/GSE/profiles01_04.pdf. Highlighted cells exceed the proposed benchmark (24%).

[22] Michelle Aronowitz, Edward L. Golding, and Jung Hyun Choi, *The Unequal Costs of Black Homeownership*, MIT Golub Center for Finance and Policy (Oct. 1, 2020), available at http://gcfp.mit.edu/wp-content/uploads/2020/10/Mortgage-Cost-for-Black-Homeowners-10.1.pdf.

lows. If FHFA declines to raise the low-income purchase goal to 27% for 2021, at a minimum FHFA should plan to raise the low-income purchase goal in 2022 and 2023.

Moreover, given the low level of loan purchases from Black and Latino borrowers, as well as ample evidence of millions of mortgage-ready people of color, FHFA should study and explore how race and ethnicity may be considered in the formulation of the affordable housing goals.[23] FHFA should examine approaches that ensure meaningful levels of lending to Black and Latino borrowers.

## IV. The GSEs' Refinance Goal is Essential for Preserving Affordable Homeownership

The GSEs have generally been more successful at meeting the low-income refinance goal than the home purchase goals. While we believe the home purchase goals are the most important to create affordable homeownership and therefore wealth-building opportunities, we also support the GSEs in meeting their refinance goal. Responsible and affordable refinance loans are crucial to *preserve* homeownership. Especially now, during the COVID-19 crisis and at a time of historic low interest rates, more borrowers should be able to benefit from the current refinance boom to save money on their mortgage payment. Unfortunately, the refinance surge is not reaching lower-income and lower-wealth families adequately, particularly borrowers refinancing smaller loan balances. At a time that the Federal Reserve is purchasing $40 billion in agency mortgage-backed securities per month to help reduce the cost of buying or refinancing a home and to stimulate the economy, FHFA and the GSEs should ensure rate term refinances are more available, not more costly, for lower-income families who would benefit greatly from the savings on their mortgage payment.

## V. FHFA Should Maintain the Dual Part Test, but Both Standards Must be Met and Enforced

Two different metrics are considered to determine compliance with the goals: 1) the market metric, which analyzes whether the GSEs meet the percentage of affordable lending in the overall conventional market; and 2) the benchmark metric, which analyzes whether the GSEs meet a percentage of their total purchase loans that are affordable, which is set based on market projections, GSE credit policies, and other factors. We recommend these components be designed to work together in the dual market test to carry out FHFA's duty to serve low and moderate-income families.

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[23] Michela Zonta, *Do the GSEs Meet the Credit Needs of Underserved Communities of Color?*, *Cityscape* 17(3) (2015), available at https://www.huduser.gov/portal/periodicals/cityscpe/vol17num3/article11.html (calling for race and ethnicity to be explicitly incorporated in designation of underserved markets).

### A. A Market Metric Goal Alone is Necessary but not Sufficient

The market metric measures how the GSEs are performing compared to other conventional market entities. The GSEs should be leading the market by meeting or exceeding this goal.[24] However, the market metric alone may simply reflect the GSEs' activities due to their historically high percentage of the conventional market and predicted continued dominance of that market. The GSEs have an affirmative duty to serve all markets at all times, and have taxpayer-supported backstops, unlike the other players in the conventional market (bank portfolios and private label securities). Yet, with the exception of the last three years, the GSEs have consistently failed to meet the market metric for the low-income home purchase goal (Figure 2). This is unacceptable. At a time of national reckoning on systemic racism rooted in discrimination and exclusion, the GSEs must take concrete actions to alleviate racial homeownership and wealth gaps. The GSEs should be leading – not lagging – the market in providing access to affordable homeownership.

**Figure 2: Enterprise Low Income Home Purchase Performance Compared to Market 2006-2019**[25]

| | Market | Fannie Mae Performance | Freddie Mac Performance |
|---|---|---|---|
| 2006 | 24.20% | 27.70% | 22.10% |
| 2007 | 26.10% | 26.00% | 24.60% |
| 2008 | 25.50% | 23.10% | 24.30% |
| 2009 | 29.60% | 25.50% | 25.40% |
| 2010 | 27.20% | 25.10% | 26.80% |
| 2011 | 26.50% | 25.80% | 23.30% |
| 2012 | 26.60% | 25.60% | 24.40% |
| 2013 | 24.00% | 23.80% | 21.80% |
| 2014 | 22.80% | 23.50% | 21.00% |
| 2015 | 23.60% | 23.50% | 22.30% |
| 2016 | 22.90% | 22.90% | 23.80% |
| 2017 | 24.30% | 25.50% | 23.20% |
| 2018 | 25.20% | 28.20% | 25.80% |

[24] *See* 12 U.S.C. § 1716; 12 U.S.C. § 1451.
[25] Percentages calculated by FHFA for 2006-2018. *See* Single-Family Housing Goals Performance 2010-2018, available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Pages/Fannie-Mae-and-Freddie-Mac-Housing-Goals-Performance.aspx; Table 6 for 2006-2013 data available at https://www.fhfa.gov/SupervisionRegulation/Rules/RuleDocuments/Enterprise_Goals_Proposed_Rule_8-29-2014.pdf and Table 1 for 2014-2016 data available at https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/2018-2020-Enterprise-Housing-Goals-Proposed-Rule.aspx. Highlighted cells indicate where Enterprise performance exceeded the market.

Furthermore, as has been the case since the Great Recession, the GSEs' book of business dominates the conventional market and will likely continue to do so. As a result, the market test alone is inherently circular; the bar is largely set by the GSEs regardless of their progress or failure to provide reasonable access to affordable home loans.

Given their dominance, the GSEs should be able to meet and exceed the market metric. As discussed further below, the GSEs' meeting the market metric, and by how much, should be relevant factors in evaluating the GSEs' performance. However, deeming the GSEs to meet their affordable housing goals by merely meeting the market would eviscerate the housing goals and their utility.

### B. A Benchmark Metric Goal Alone is Also Insufficient

FHFA sets the benchmark goal primarily based on a complicated model forecasting exercise. For the current rulemaking, FHFA did not conduct a mortgage market study and proposes to extend the goals for one year from the last cycle. However, as we have asserted in prior comments, if FHFA compares the GSEs only to a forecasted prediction in determining whether they meet the affordable housing goals, the point of the goals is lost. The intent of the goals is not to accurately predict the future with the best model; the intent is to incentivize and hold the GSEs accountable for serving the entire market. Given this understanding, a forecast model is helpful for providing a guideline but should not be the sole standard to which the GSEs are held.

There have been various criticisms of a benchmark metric. We think that these criticisms in fact speak to how the benchmark metric should be administered and utilized in the evaluation of the GSEs' affordable housing goal, not whether such a goal should be set and enforced. For example, it is argued that external conditions could change, making it harder to reach a benchmark goal. However, this is inherent in any goal setting, and FHFA is well equipped to respond fairly to that scenario through its authority to retroactively adjust the goal and/or to formulate any response to a failure to meet the goal. This same flexibility applies to and addresses the argument that FHFA could set the goal inappropriately high. Most important, for the benchmark metric to be effective it must be a required part of the evaluation of whether the GSEs met their affordable goals, rather than an alternative to the market test.[26]

### C. For Housing Goals to be Met, Both Metrics Should be Matched Under the Dual Test

The key question is how the two metrics should interact. It is clear that if a GSE fails both metrics, then they have failed to meet their housing goals. It is likewise clear that if they pass

[26] Many banks use loans without mortgage insurance as a way to meet their Community Reinvestment Act obligations; if the GSEs do not purchase these loans, then these banks would likely have a higher percentage of low income and very low income purchase loans on their portfolio than the GSEs purchase. While the GSEs' charters make it difficult for the GSEs to purchase loans without mortgage insurance, we believe it is their responsibility to provide a liquid market for these loans. For example, the GSEs could use the recourse provision of their charter.

both metrics, they have met their housing goals. The question is what results when a GSE passes one metric and fails the other. As shown in the discussion above, the market metric is inherently subject to being circular because the GSEs dominate the conventional market. For these reasons, to meet the housing goals, the GSEs should have to meet both the market and benchmark metrics to pass the goal.

That said, the meeting of the market metric and by how much the GSEs exceed the market should be a significant factor in evaluating the GSEs' performance on the housing goal. For example, if the GSEs are substantially above the market, that is strong evidence that they are striving to provide affordable housing. On the other hand, if they are one tenth of one percent above the market, this provides little evidence in the current environment that they are making substantial progress in returning reasonable accessibility to the market.

The GSEs' meeting of the market metric, and by how much, should be an important consideration in the FHFA's evaluation of a failure to meet the benchmark goal and its determination of what remedial or enforcement steps, if any, are appropriate. This approach provides the FHFA the tools and flexibility to effectively and fairly evaluate the GSE's performance relative to the two metrics. This flexibility is inherent in the entire goals process. For example, if the GSEs fail the benchmark badly without a good explanation, that should not be treated the same as missing the goal by a tenth of one percent with evidence of good effort. Again, FHFA would use its discretion to respond appropriately to the two very different scenarios. Conversely, the alternative approach of declaring any meeting of the market metric to be a meeting of the housing goals is unduly rigid, and it deprives the FHFA of the tools necessary to carry out its statutory duty of ensuring credit is available to creditworthy borrowers. If exceeding the market metric by any amount at all constitutes meeting the housing goals, it creates a bright line loophole for the GSEs. This would nullify the benchmark metric for the coming years and render the housing goals a false promise for the tens of thousands of low and moderate-income families who have the potential to prosper from affordable homeownership opportunities provided by the GSEs.

## VI. FHFA and the GSEs Should Modify their Pricing Policies to Help Meet Housing Goals

We urge FHFA and the GSEs to revisit their pricing policies and consider how the current structure is a barrier to the GSEs' ability to purchase loans to meet its affordable housing goals. FHFA should set guarantee fees in such a way as to pool risk, eliminate excessive risk-based pricing, and encourage wide access to responsible homeownership. FHFA should also consider the ways in which the PMIERs capital requirements have contributed to greater risk-based pricing and differential pricing for private mortgage insurance.[27]

[27] *See* discussion of risk-based mortgage pricing in Michelle Aronowitz, Edward L. Golding, and Jung Hyun Choi, *The Unequal Costs of Black Homeownership*, MIT Golub Center for Finance and Policy (Oct. 1, 2020), available at http://gcfp.mit.edu/wp-content/uploads/2020/10/Mortgage-Cost-for-Black-Homeowners-10.1.pdf.

Underwriting structures determine if borrowers are creditworthy, but pricing structures have a significant impact on whether a creditworthy borrower can afford a mortgage. Differential pricing creates an additional barrier to mortgage credit by increasing the price, sometimes significantly, for some borrowers relative to others.[28] There is evidence of price acting as a barrier, especially in today's mortgage market. For example, although Fannie Mae's guidelines allow the GSE to purchase loans with credit scores down to 620 and loan-to-value (LTV) ratios of up to 97%, very few loans purchased by the GSE have these characteristics. For example, just 4.1% of Fannie Mae's 2016 single-family loan purchases had credit scores below 660 and just 1.1% had a combination of a credit score under 660 and an LTV over 80%. One reason is that excessive risk-based pricing by both the GSEs and private mortgage insurers cumulatively add significant cost to loans for borrowers with lower scores and less wealth for a down payment. For example, the combination of loan-level price adjustments and mortgage insurance premiums adds over 300 basis points to the annual cost of a mortgage for a borrower with a credit score of 620 and an LTV of 97%. Thus, reducing differential pricing would likely further the GSEs' loan purchases in underserved markets.

Additionally, recent FHFA policies have and will further constricted access to credit. First, the proposed capital rule erroneously treats the GSEs as banks and therefore requires bank-like capital. If the proposed rule is finalized and the GSEs exit conservatorship, the rule will lead to gratuitously high capital levels that increases the price of mortgage credit, running directly contrary to the GSEs' charter mission to promote access to mortgage credit to underserved borrowers.

The capital requirements of the GSEs should ensure that the cost of a large-scale financial catastrophe such as the Great Recession or the current COVID-19 crisis is distributed broadly. Despite the efforts of FHFA in the proposed rule to level capital costs through imposing minimum charges on low-risk loans, the overall increase in capital requirements beyond the capital required to cover losses from a 2008-type event and remain going concerns overwhelms the leveling. The result is that borrowers would face unnecessarily higher costs and reduced availability of mortgages. Loan level price adjustments added after the previous crisis have substantially increased costs for low- to moderate-income and lower-wealth borrowers and families of color. Instead, more level pricing should be applied to more reasonable capital standards, resulting in a substantial net decrease in the cost to these groups, in recognition of the fact that the burden of past catastrophic market failure and future estimated systemic risk and its potential disproportionate impact should not be an undue responsibility of low-wealth borrowers.

Another example of FHFA constraining access is the policy change imposing a 5-7% penalty if a loan goes into forbearance after closing but before delivery to the GSEs. This change reduces access to credit without justification. The small number of loans that enter into forbearance post-closing pose no significant risk to the housing finance system. However, lenders will inevitably

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[28] *See* Mike Calhoun and Sarah Wolff, *Who Will Receive Home Loans, and How Much Will They Pay?*, Urban Institute (2016), available at https://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-finance-reformincubator/mike-calhoun-and-sarah-wolff-who-will-receive-home-loans-and-how-much-will-they-pay.

apply deep credit overlays to avoid penalties that wipe out the profit on these loans and many more that never go into forbearance. This will disproportionately impact first-time homebuyers with smaller down payments, less than pristine credit, or those employed in areas that have already withstood the majority of likely job loss from the COVID-19 economic crisis. We urge FHFA to rescind the penalty so that these loans are purchased without the punitive pricing that are contributing to market-wide credit overlays.

Lastly, FHFA's recent adverse market refinance fee will have a negative impact on borrowers and should be reversed. While the fee would not apply to loans below $125,000, it will still affect many lower-income and lower-wealth borrowers. Today's refinance boom is focused on mostly white and wealthier borrowers refinancing large loan balances. As described in section IV, at a time that the Federal Reserve is bolstering the mortgage market, FHFA and the GSEs should ensure rate term refinances are more available, not more costly, for lower-income families who would benefit greatly from the savings on their mortgage payment. The adverse market fee will only reinforce the market trend of low levels of rate term refinances for median and smaller loans that are over $125,000.

## VII. FHFA Should Continue to Monitor the Low-Income Areas Home Purchase Subgoal to Ensure Policy Objectives are Met

The low-income areas home purchase subgoal is based on the percentage of all single-family, owner-occupied home purchase mortgages purchased by an GSE that are either: (1) for families in low-income areas, defined to include census tracts with median income less than or equal to 80 percent of AMI, or (2) for families with incomes less than or equal to AMI who reside in racial minority census tracts (defined as census tracts with a racial minority population of at least 30 percent and a tract median income of less than 100 percent of AMI). Borrowers may qualify under either or both conditions. However, the data show that mortgages satisfying condition one vastly outweigh mortgages satisfying condition two.

In its proposed rule on the 2018-2020 goals, FHFA noted that its analysis found that the mortgage market in both low-income areas and in high-racial minority census tracts has been moving towards borrowers with higher incomes in recent years.[29] In addition, research shows that white and Asian borrowers are overrepresented in the underserved markets the GSEs target.[30] FHFA further notes that while the presence of higher income borrowers in lower income and higher racial minority areas may be a sign of economic diversity and may be related to improving economic indicators for the community, there is still concern that such a trend would displace lower income households in these areas or that low-income borrowers may not be able to access the credit they need to purchase homes in these areas. Additionally, the Center for

[29] FHFA Proposed Rule on 2018-2020 Enterprise Housing Goals (2017), available at https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/2018-2020-Enterprise-Housing-Goals-Proposed-Rule.aspx.

[30] Michela Zonta, *Do the GSEs Meet the Credit Needs of Underserved Communities of Color?*, *Cityscape* 17(3) (2015), available at https://www.huduser.gov/portal/periodicals/cityscpe/vol17num3/article11.html.

Investigative Reporting study found that borrowers of color in gentrifying communities received higher loan denials.[31] We share these concerns and encourage FHFA to monitor and further analyze the trend, considering whether this subgoal meets policy objectives. As a way to provide further transparency to the public in assessing the trend, FHFA should disclose the income of borrowers in loans qualifying for the low-income area purchase subgoal.

**Conclusion**

FHFA and the GSEs should focus their efforts on addressing racial homeownership gaps and ensure access to credit to underserved families. The affordable housing goals are a key accountability metric and should not be kept artificially low. The GSEs should be leading, not lagging, the market. FHFA should release additional data to the public, increase the low-income purchase goal and require the GSEs to meet both the benchmark and market tests, take measures to make rate term refinancing more available to lower wealth borrowers and borrowers of color, revise pricing policies that unjustifiably constrict access and make compliance with the goals more difficult, and monitor the low-income areas purchase subgoal to prevent displacement.

Sincerely,

Center for Responsible Lending

Consumer Federation of America

The Leadership Conference on Civil and Human Rights

NAACP

National Association of Real Estate Brokers

National Community Stabilization Trust

National Fair Housing Alliance

National Housing Conference

National Urban League

[31] Aaron Glantz and Emmanuel Martinez, *Gentrification Become Low-Income Lending Law's Unintended Consequence*, Center for Investigative Reporting (Feb. 16, 2018), available at https://www.revealnews.org/article/gentrification-became-low-income-lending-laws-unintended-consequence/.