Submitted via FHFA website

Center for Responsible Lending

Comment to the Federal Housing Finance Agency on Enterprise Housing Goals Advance Notice of Proposed Rulemaking

12 CFR Part 1282, RIN 2590-AB12

February 28, 2021

The Center for Responsible Lending (CRL)[1] appreciates the opportunity to comment on the Affordable Housing Goals Advance Notice of Proposed Rulemaking. In exchange for government support, Fannie Mae and Freddie Mac (GSEs) have an explicit public interest mission. This mission is foundational and part of their charters – the GSEs' very reason for existing.[2] The mission includes promoting access to mortgage credit to underserved borrowers, including Black and brown families, 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.

The ongoing health pandemic continues its devastating impact on families hardest hit by COVID-19. Black, brown, and other low-wealth families are overwhelmingly burdened by the health and economic calamity borne by the crisis. Further, the nation is experiencing a reckoning of racial injustice that is rooted in federally sanctioned discriminatory housing policies and broader societal discrimination that excluded Black families and other people of color from entering homeownership on parity with whites. These exclusionary practices are a significant contributor to existing racial homeownership and wealth gaps. They are also a factor in why Black and brown communities have higher incidences of COVID-19 as they live in communities that are more environmentally toxic and are disproportionately employed in the service sector that has been most negatively impacted by the pandemic. Many Black and brown workers also did not have the ability to shelter in place and work from home.

Far too many Black and brown families lack the economic cushion that prior federal investments in homeownership have provided to many white families. It is critically urgent for a reversal of these trends as the pandemic has made it clear that having a home is a health priority. The GSEs have woefully unfulfilled their statutory obligations to ensure adequate activity in Black, Latino, and other

---

[1] CRL is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. For 40 years, Self-Help has created asset-building opportunities for low-income individuals, rural communities, women, and families of color. In total, Self-Help has provided over $9 billion in financing to 172,000 homebuyers, small businesses, and nonprofit organizations and serves more than 160,000 mostly low-income families through 72 credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, Washington, and Wisconsin.

[2] *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.

communities of color since the Great Recession. FHFA must take swift and bold action now in creating affordable housing goals that can help return the GSEs to former periods when their activity was much stronger. A key goal of the affordable housing goals must be to help to build toward more racial equity in homeownership. 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."[3]

CRL provides the following recommendations:

1) FHFA should conduct a mortgage market study for 2022-2023 goal setting and provide greater transparency into the impact of the COVID-19 crisis in the goal-affected markets.
2) FHFA should significantly increase the GSEs' affordable housing goals, particularly the low-income purchase goal.
3) FHFA and the GSEs should take robust measures to mitigate foreclosures. The GSEs should make rate term refinancing more available to lower wealth borrowers and borrowers of color, including implementing a streamline refinance program. In addition, the GSEs should support affordable loan modifications for homeowners who have been hit hard by the COVID-19 pandemic and recession, including by using the market interest rate for flex mods below 80% LTV and providing further guidance to servicers to help inform borrowers of forbearance options and ensure that borrowers can access relief.[4]

This comment letter highlights previous recommendations regarding the GSEs' goals, as well as responds to the specific questions set forth in the ANPR.

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 72.1% while the rate is 42% and

[3] 12 U.S.C. § 4561. Additionally, section 4564 describes a focus on serving "minority census tracts."

[4] Fannie Mae, COVID-19: *The Need for Consumer Outreach and Home Purchase/Financing Digitization*, National Housing Survey (August 2020), 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).

48.1% 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 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.

---

[5] Alanna McCargo and Jung Hyun Choi, *Closing the Gaps: Building Black Wealth Through Homeownership*, Figure 3, Urban Institute (November 2020), https://www.urban.org/sites/default/files/publication/103267/closing-the-gaps-building-black-wealth-through-homeownership_0.pdf.

[6] Asset Building Policy Network, *The Hispanic-White Wealth Gap Infographic* (September 2019), https://prosperitynow.org/sites/default/files/resources/ABPN_Hispanic_White_Racial%20Wealth%20Gap%20Infographic_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, 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), 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), 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*, 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), http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-2011.pdf (finding that Black Americans and Latinos were consistently more

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 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] In 2019, only 4.8% of Fannie Mae and 3.6% of Freddie Mac home purchase loans were from Black borrowers, and 4.1% and 3.7% of refinance loans.[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,

---

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), 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), http://www.federalreserve.gov/pubs/feds/2010/201059/index.html.

[10] *See, e.g.*, Urban Institute, Housing Credit Availability Index Q2 2019, https://www.urban.org/policy-centers/housing-finance-policy-center/projects/current-hcai/archive/q2-2019 (noting that significant space remains to safely expand the credit box).

[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), 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), 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), 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), https://sf.freddiemac.com/articles/insights/industry-insight-expanding-homeownership-to-the-millennial-market. Given that many of these borrowers do not have family wealth for a down payment because of the lack of intergenerational wealth, targeted down payment assistance will be critical to enable mortgage-ready borrowers of color to become homeowners.

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

[13] FHFA Annual Housing Report, at p. 11, Table 6 (October 2020), https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Annual-Housing-Report-2020.pdf.

[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), https://www.census.gov/content/dam/Census/library/publications/2020/demo/p25-1144.pdf. See also Joint

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, closing the Black family housing gap 20 years ago might have generated $218 billion in additional U.S. consumption.[16] The study further estimates that we could grow the economy by $5 trillion if the racial wealth gap is closed.[17] 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.[18] FHFA and the GSEs should invest as much effort as possible to ensuring access to responsible credit for more underserved communities, including by setting more robust goals.

II. FHFA Must Conduct a Mortgage Market Study for 2022-2023 Goal Setting and Should Provide Greater Transparency into the Impact of the COVID-19 Crisis in the Goal-Affected Markets

FHFA set the 2021 goals without conducting the typical mortgage market study and set the benchmarks at the same level as the 2018-2020 goals. We expressed disappointment in this decision in a prior comment and urge FHFA to conduct a robust mortgage market study in setting the 2022 and 2023 goals.

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. The agency should use this capability to implement new measures to track the progress of GSE loans to low-income borrowers and borrowers of color. Additionally, 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.

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), https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D.

[17] *Id.*

[18] 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, https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap.

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.[19] 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. 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.

As FHFA contemplates the GSEs' goals for 2022 and 2023, it 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.[20] 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 lows driven by the Federal Reserve's ongoing support of the bond market.

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.[21] 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 and the GSEs Should Create a Streamline Refinance Program

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

---

[19] *Supra* n. 11.

[20] 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), http://gcfp.mit.edu/wp-content/uploads/2020/10/Mortgage-Cost-for-Black-Homeowners-10.1.pdf.

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

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. Refinance activity accelerated significantly in 2020, boosting the average FICO score even higher.[22] The median credit score was 758 in February 2020 prior to the COVID crisis and 772 at the end of 2020.[23]

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. We urge the GSEs to create a streamline refinance program to ensure that affordable refinances are more accessible to borrowers, particularly borrowers of color. Moreover, the GSEs should not charge any LLPAs on a streamline refinance, as LLPAs were already paid at purchase.

V. Question 1: Loans That Should be Excluded from Receiving Credit

CRL urges FHFA to exclude loans from receiving housing goals credit if they do not meet the QM product protections. During the subprime lending boom, lenders sold millions of families abusive loans that were not sustainable. Leading up to the crisis, these dangerous niche products that lenders mass-marketed included interest-only loans, ARM loans that combined “teaser” rates with subsequent large jumps in payments, negative amortization loans, and loans made with limited or no documentation of the borrower’s income or assets.[24] Studies have shown that these products in and of themselves caused

---

[22] Urban Institute, Housing Finance At a Glance: A Monthly Chartbook (February 2021), https://www.urban.org/sites/default/files/publication/103746/housing-finance-at-a-glance-a-monthly-chartbook-february-2021_0.pdf.

[23] Urban Institute, Housing Finance At a Glance: A Monthly Chartbook (December 2020), at p. 17, https://www.urban.org/sites/default/files/publication/103430/housing-finance-at-a-glance-a-monthly-chartbook-december2020.pdf (FICO scores for banks and nonbanks in both GSE and Ginnie Mae segments increased over the course of 2019 and the first eleven months of 2020, due to increased refinance activity; this activity is skewed toward higher FICO scores); Urban Institute, Housing Finance At a Glance: A Monthly Chartbook (February 2020), at p. 17, https://www.urban.org/sites/default/files/publication/101766/february20chartbook202020.pdf.

[24] Financial Crisis Inquiry Commission, *The Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*, at pp. 104-111 (2011), https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf. Additionally, the Commission concluded: “Based on the evidence and interviews with dozens of individuals involved in this subject area, we determined that [the affordable housing goals] only contributed marginally to Fannie’s and Freddie’s participation in [risky mortgages].” *Id.* at xxvii. Furthermore, “none of Fannie Mae’s 2004 purchases of subprime or Alt-A securities were ever submitted to HUD to be counted toward the goals.” *Id*. at 123. The Federal Reserve Bank of St. Louis determined that there was “no evidence that the affordable housing goals of the CRA or of the GSEs affected” the volume, pricing, and performance of securitized subprime mortgages originated in the sample studied. Rubén Hernández-Murillo, Andra C. Ghent, and

about half of the increased risk in mortgage lending that led to the Great Recession.[25] These abusive products were disproportionately targeted to communities of color. Roughly half of all mortgages made to Black and Latino families during the run-up to the crisis were subprime loans, which included patently unsustainable terms.[26] Evidence shows that many of those borrowers were steered into toxic mortgages even when they qualified for safer and more responsible loans with cheaper costs.[27] As a consequence

---

Michael T. Owyang, Federal Reserve Bank of St. Louis, *Did Affordable Housing Legislation Contribute to the Subprime Securities Boom?* (March 2012), https://research.stlouisfed.org/wp/more/2012-005. Numerous other academic research studies have come to similar conclusions.

[25] Morris A. Davis, William D. Larson, Stephen D. Oliner, and Benjamin R. Smith, A Quarter Century of Mortgage Risk, FHFA Staff Working Paper 19-02, at p. 35, October 2019 (revised) January 2019 (original) (finding that "risky product features accounted for more than half of the rise in risk during the boom years", defining "risky product features" as those ineligible for QM status). The definition of "risky product features" is conservative because it does not include many loans that would also be ineligible for QM status. Namely, the definition excludes the 22% of subprime loans that were 30-year ARMs (40% of subprime loans were) and that were fully documented (60% of subprime loans were, and 40% times 56% equals 22%). These loans would not have been QM because they almost certainly were not underwritten at the maximum interest rate for the first five years of the loan and a high percentage had prepayment penalties and did not escrow for taxes and insurance. Prepayment penalties are prohibited and escrows are required for loans over 1.5% over APOR by Dodd-Frank. For characteristics of subprime loans, see Testimony of Eric Stein before the U.S. Senate Committee on Banking, Housing and Urban Affairs, Turmoil in the U.S. Credit Markets: The Genesis of the Current Economic Crisis, Center for Responsible Lending (October 16, 2008) at pp. 11-14, 34-39, available at https://www.responsiblelending.org/sites/default/files/nodes/files/researchpublication/senate-testimony-10-16-08-hearing-stein-final.pdf. See also Lei Ding, Roberto Quercia, Wei Li, and Janneke Ratcliffe, Risky Borrowers or Risky Mortgages Disaggregating Effects Using Propensity Score Models, at pp. 245-277, Journal of Real Estate Research: Vol. 33, No. 2, (2011).

[26] Federal Reserve researchers, using data from 2004 through 2008, have reported that higher-rate conventional mortgages were disproportionately distributed to borrowers of color, including African-American, Latino, American Indians, Alaskan Natives, Native Hawaiians, Pacific Islanders, and Hispanic borrowers. See R.B. Avery, K.P. Brevoort, and G.B. Canner, Higher-Priced Home Lending and the 2005 HMDA Data, Federal Reserve Bulletin (September 2006), available at http://www.federalreserve.gov/pubs/bulletin/2006/hmda/bull06hmda.pdf. For example, in 2006, among consumers who received conventional mortgages for single-family homes, roughly half of African-American (53.7 percent) and Hispanic borrowers (46.5 percent) received a higher-rate mortgage compared to about one-fifth of non-Hispanic white borrowers (17.7 percent). According to the researchers, "[F]or higherpriced conventional first-lien loans for an owner-occupied site-built home, the mean APR spreads were about 5 percentage points above the yields on comparable Treasury securities both for purchase loans and refinancings". R.B. Avery, K.P. Brevoort, and G.B. Canner, The 2006 HMDA Data, at p. A88, Federal Reserve Bulletin (December 2007), available at http://www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06final.pdf. For a discussion of the unsustainable subprime lending terms and practices, see Testimony of Eric Stein before the U.S. Senate Committee on Banking, Housing and Urban Affairs, ibid.

[27] Rick Brooks and Ruth Simon, Subprime Debacle Traps Even Very Credit-Worthy, Wall Street Journal, December 2007, available at https://www.wsj.com/articles/SB119662974358911035; see Debbie Gruenstein Bocian, Keith Ernst and Wei Lee, Race, Ethnicity and Subprime Loan Pricing, Center for Responsible Lending, Journal of Economics and Business, at pp. 110-124, Vol. 60, Issues 1-2, January-February 2008.

of these lending practices, Black and Latino families lost over $1 trillion dollars in wealth during the crisis.[28]

In response to these abuses, the Dodd-Frank Act established rules ensuring that borrowers have a reasonable ability to repay their mortgage loans at consummation and requiring full documentation of income and assets. The QM statutory product protections ensured that most borrowers will not be placed in loans with built-in payment shock that they cannot handle or excessive fees: 1) the loan cannot have negative amortization, interest-only payments, or balloon payments; 2) ARMs must be underwritten at the maximum rate in the first five years; 3) the mortgage term must be 30 years or less; and 4) total points and fees generally cannot exceed 3 percent of the loan amount. The product protections are the most important benefit to borrowers obtaining QM loans. To ward off the potential of payment shock or other predatory features, the GSEs should ensure that only loans meeting the QM product requirements will qualify for housing goal credit.

Moreover, we strongly oppose the recent PSPA amendment provision imposing limits on the support the GSEs can provide for various products.[29] The single-family loan limit restricts the GSEs' purchase of so-called "high-risk" loans to 6% of their purchases and 3% of their refinance mortgages. These are defined as loans with at least two of the following characteristics: greater than 90% LTV, greater than 45% DTI, and credit score below 680. While the GSEs are inside these caps currently, this change goes in the wrong direction. The GSEs should be doing much more to address the affordable housing crisis and make responsible mortgage credit available to underserved families.[30] They should not impose additional roadblocks. Furthermore, holistic underwriting generally considers compensating factors and credit characteristics beyond LTV, DTI, and credit score. FHFA should not over-rely on these factors and exclude creditworthy families from accessing a conventional loan. FHFA should push the GSEs to more quickly adopt alternative credit scoring models to incorporate borrowers' rental history. Current scoring criteria fail to include this data, which is the most analogous example of owning a home.

VI. Question 2: Low-Income Areas Home Purchase Subgoal

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.

[28] Debbie Gruenstein Bocian, Peter Smith, and Wei Li, Collateral Damage: The Spillover Costs of Foreclosures, Center for Responsible Lending, at p. 2 (Oct. 24, 2012), available at https://www.responsiblelending.org/mortgagelending/research-analysis/collateral-damage.pdf.

[29] Press Release, Treasury Department and FHFA Amend Terms of Preferred Stock Purchase Agreements for Fannie Mae and Freddie Mac (Jan. 14, 2021), https://home.treasury.gov/news/press-releases/sm1236.

[30] *See, e.g.*, discussion in Michael Calhoun and Lewis Ranieri, *Government-Sponsored Enterprises at the Crossroads*, The Brookings Institution (Feb. 2021), https://www.brookings.edu/wp-content/uploads/2021/02/20210219_CRM_CalhounRanieri_FINAL.pdf.

However, the data show that mortgages satisfying condition one vastly outweigh mortgages satisfying condition two.

In previous proposed rules and in the ANPR, 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.[31] In addition, research shows that white and Asian borrowers are overrepresented in the underserved markets the GSEs target.[32] 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 Investigative Reporting study found that borrowers of color in gentrifying communities were denied a loan at a higher rate than similarly situated white borrowers.[33] For example, in Philadelphia, Black borrowers were nearly three times as likely to be denied in comparison to white borrowers.[34]

To address these concerns, FHFA should consider a borrower upper income cap for credit in low-income census tracts. FHFA should conduct and release analysis exploring the impact of various income caps (*e.g*., 80%, 100%, 125%). The analysis should detail the impact of an income cap on different racial and ethnic groups. The study should also explore ways to quantify gentrification trends in low-income census tracts, including the consideration of the percentage of jumbo mortgage loans by racial demographics issued in low-income census tracts. Once FHFA provides the public with additional data and analysis, stakeholders can make informed recommendations.

VII. Question 3: Opportunity Zones

FHFA should not expand the low-income areas home purchase subgoal to give special consideration to properties located in Opportunity Zones. As currently structured, the Opportunity Zone program has numerous issues. Most of the investments under the program have gone to large real estate projects

---

[31] 85 Fed. Reg. 82150.

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

[33] *See* Aaron Glantz and Emmanuel Martinez, *Kept Out: For People of Color, Banks are Shutting the Door to Homeownership*, The Center for Investigative Reporting (Feb. 15, 2018), https://revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/. Additionally, the lack of lending opportunity is driving neighborhood gentrification. Aaron Glantz and Emmanuel Martinez, *Kept Out: Gentrification Became Low-Income Lending Law's Untended Consequence*, The Center for Investigative Reporting (Feb. 16, 2018), https://revealnews.org/article/gentrification-became-low-income-lending-laws-unintended-consequence/.

[34] Emmanuel Martinez and Aaron Glantz, *How Reveal Identified Lending Disparities in Federal Mortgage Data*, Reveal from the Center for Investigative Reporting (2018), https://s3-us-west-2.amazonaws.com/revealnews.org/uploads/lending_disparities_whitepaper_180214.pdf.

rather than small businesses and community-focused development.[35] In addition, only a small percentage of investments have benefited existing small business. The main beneficiaries of the program have been wealthy investors, not residents of low-income communities. As the Urban Institute finds: "It appears that [Opportunity Zones] are neither on a trajectory to democratize access to capital nor will they, at scale, incentivize mission-oriented projects that align with community goals and priorities."[36] As such, CRL urges that FHFA not incorporate Opportunity Zones into its goal analysis.

VIII. Question 4: FHFA and the GSEs Should Modify their Pricing Policies to Help Meet Housing Goals

The affordable housing goals have been critical to help expand low-income homeownership in the market, but the impact of the goals cannot be reviewed in isolation. The goals are connected to other FHFA and GSE policies that impact pricing and the ability of low- to moderate-income families and families of color to access a GSE loan.

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.

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.[37] There is evidence of price acting as a barrier, especially in today's mortgage market. 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. 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.[38] For

[35] Brett Theodos, Jorge Gonzalez, and Brady Meixell, *The Opportunity Zones Incentive Isn't Living Up to Its Equitable Development Goals. Here are Four Ways to Improve It*, Urban Institute (June 17, 2020), https://www.urban.org/urban-wire/opportunity-zone-incentive-isnt-living-its-equitable-development-goals-here-are-four-ways-improve-it.

[36] *Id.*

[37] *See* Mike Calhoun and Sarah Wolff, *Who Will Receive Home Loans, and How Much Will They Pay?*, Urban Institute (2016), 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.

[38] For a more detailed discussion of the levers that affect pricing and the distribution of pricing for credit risk see Mike Calhoun and Sarah Wolff, *Who Will Receive Home Loans, and How Much Will They Pay?*, Urban Institute

example, the combination of loan-level price adjustments and mortgage insurance premiums add over 270 basis points to the annual cost of a mortgage for a borrower with a credit score of 620 and an LTV of 97%.[39] 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 final capital rule erroneously treats the GSEs as banks and therefore requires bank-like capital. 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.

FHFA's recent adverse market refinance fee also has 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, including many families of color. Today's refinance boom is focused on mostly white and wealthier borrowers refinancing large loan balances. At a time that the Federal Reserve is bolstering the mortgage market, FHFA and the GSEs should ensure rate term refinances are more equitably available, not more costly, for lower-income families and families of color who would benefit greatly from the savings on their mortgage payment. As described in section IV, the GSEs should

(2016), http://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-financereformincubator/mike-calhoun-and-sarah-wolff-who-will-receive-home-loans-and-how-much-will-they-pay.

[39] 350/4+186=273.5 basis points. Fannie's Mae's LLPA for this combination of credit score and LTV is a one-time fee of 350 basis points. *See* page 2, https://www.fanniemae.com/content/pricing/llpa-matrix.pdf. We assumed a LLPA multiple of 4 to convert this upfront fee to an ongoing cost comparable to the MI premium. The GSE ongoing cost equals 87.5 basis points (350/4). Borrower paid MI from Genworth for this combination of credit score and LTV is a continuing fee of 186 basis points. *See* https://new-content.mortgageinsurance.genworth.com/documents/rate-cards/national/monthly_premium_mi/00460.Natl.Monthly.Fixed.BPMI.0719.pdf. While the GSEs do offer affordable loan products with lower fees for borrowers below 80% AMI, these products constitute a very small percentage of purchases overall. *See* https://sf.freddiemac.com/working-with-us/origination-underwriting/mortgage-products/home-possible (Home Possible); https://singlefamily.fanniemae.com/originating-underwriting/mortgage-products/homeready-mortgage (Home Ready).

implement a streamline refinance program. The GSEs should not charge an adverse market fee or LLPAs for these loans.

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, create a streamline refinance program to make rate term refinancing more available to lower wealth borrowers and borrowers of color, eliminate the PSPA-imposed limits, conduct further research on the impact of an upper income limit for the low-income areas purchase subgoal, and revise pricing policies that unjustifiably constrict access and make compliance with the goals more difficult.