National Association of Home Builders

Housing Finance & Regulatory Affairs
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Sandra Thompson
Acting Director
Federal Housing Finance Agency
Office of the Director
400 7th Street, S.W.
10th Floor
Washington, D.C. 20219

Submitted electronically: https://www.fhfa.gov/AboutUs/Contact/Pages/Request-for-Information-Form/aspx

Re: Request for Input
Enterprise Equitable Housing Finance Plans

Dear Acting Director Thompson:

On behalf of the National Association of Home Builders (NAHB), I appreciate the opportunity to respond to the Federal Housing Finance Agency's (FHFA) Request for Input regarding the proposed Enterprise Equitable Housing Finance Plans (Proposed Plans). Fannie Mae and Freddie Mac (the Enterprises) are significant participants in the housing finance industry, influencing mortgage origination and servicing policies and practices well beyond the conforming mortgage market to which their acquisitions are limited. At this unique moment in history, the industry is taking a hard look at how to reduce the racial gap in homeownership and provide quality housing for low-income families in neighborhoods of opportunity. The Enterprises are uniquely situated to take a leading role in this effort.

NAHB is a Washington, D.C.-based trade association that represents more than 140,000 members. NAHB members design, construct, and supply single-family homes, build and manage multifamily projects, and remodel existing homes. The ability of the home building industry to meet the demand for housing, including addressing affordable housing needs, and contribute to the nation's economic growth is dependent on an efficiently operating housing finance system that offers home buyers in all geographic areas access to affordable mortgage financing at reasonable interest rates through all economic conditions.

Background

The Enterprises were chartered to provide liquidity and stability in the mortgage market to ensure the availability of mortgage credit in all markets through all economic conditions. Over time, the federal government has expanded their public mission. In 1992, Congress passed the Federal Housing Enterprises Financial Safety and Soundness Act (Safety and Soundness Act) of 1992, which amended both Enterprises' charters to require them to meet an "affirmative obligation to facilitate the financing of affordable housing for low-income and moderate-income families."[1] In 1995, HUD began to require Fannie Mae and Freddie Mac to meet specified annual single-family and multifamily purchase goals to comply with the mandate.

[1]Federal Housing Finance Agency Office of the Inspector General, "A Brief History of the Housing Government-Sponsored Enterprises," Page 5.

More recently, the Housing and Economic Recovery Act (HERA) of 2008 further amended the Safety and Soundness Act by establishing a duty for Fannie Mae and Freddie Mac to serve three underserved markets – manufactured housing, affordable housing preservation, and rural markets – in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for very low-, low-, and moderate-income families in those markets.

In their efforts to fulfill their statutory obligations under the Housing Goals and Duty to Serve (DTS) requirements, the Enterprises have introduced underwriting enhancements, new and updated policies and products targeted to the borrowers and markets identified as underserved and lacking access to affordable mortgage financing for homeownership and affordable rental housing.

Over the last couple of years, focus on the difference in homeownership rates between racial and ethnic populations in the United States, particularly the gap between Black and White homeownership levels, has intensified. Data indicates the median income for Black households is about 60 percent that of the median income for White households.[2] The housing finance industry is reviewing current business practices to improve opportunities for disadvantaged, lower-income and minority consumers to build wealth through homeownership. This review must include all aspects of the mortgage process from origination through servicing, as well as delinquency and foreclosure processes.

On January 20, 2021, President Biden issued Executive Order 13985, entitled "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." On February 1, 2021, President Biden issued a memorandum to the Secretary of Housing and Urban Development (HUD), Marsha Fudge, reaffirming the Biden Administration's commitment to end housing discrimination and instructing the agency to redress the nation's long history of discriminatory housing practices and policies. The memorandum directs HUD to take steps necessary to fully implement the Fair Housing Act. The Fair Housing Act was enacted by Congress in 1968 with a broad mandate to lift barriers that created separate and unequal neighborhoods on the basis of race, ethnicity, and national origin.

On August 12, 2021, Secretary Fudge enlisted FHFA Acting Director Sandra Thompson in HUD's efforts to comply with President Biden's memorandum. Secretary Fudge and Acting Director Thompson signed a Memorandum of Understanding declaring FHFA and HUD would share information and resources to enhance enforcement of the Fair Housing Act at the Enterprises, the Federal Home Loan Banks, and HUD. Both expect their combined and coordinated efforts will improve fair lending oversight of the mortgage finance system and begin to remedy the history of discriminatory housing practices.

The Proposed Enterprise Equitable Housing Finance Plans

The proposed Equitable Housing Finance Plans would require Fannie Mae and Freddie Mac to publish annually, three-year plans detailing how they would undertake sustainable and meaningful actions to advance equity in the housing markets, while ensuring the Enterprises' safety and soundness. The first plans submitted by the Enterprises would be required to include objectives, measurable goals and planned meaningful actions to reduce the racial or ethnic homeownership gap and reduce underinvestment or undervaluation in formerly

[2] https://www.epi.org/blog/racial-disparities-in-income-and-poverty-remain-largely-unchanged-amid-strong-income-growth-in-2019/

redlined areas that remain racially or ethnically concentrated areas of poverty or otherwise are underserved or undervalued.

FHFA acknowledges these Proposed Plans would supplement existing Enterprise requirements, which many assume must be insufficient since the homeownership gap between Black and White homeowners has not decreased while these rules have been in place. However, addressing the racial and ethnic gap in homeownership is not a specific goal of any of the Enterprises' existing requirements and primarily would be affected currently by the Enterprises to the extent the minority home buyers or homeowners qualify as very low-, low- and moderate-income borrowers.

Research has shown disparities in credit scores, wealth accumulation and incomes between minorities and White home buyers and homeowners. These disparities have inadvertently led to the homeownership gap. Recent steps and proposed actions by FHFA and the Enterprises are intended to address the impact of these disparities and have been taken through administrative means and without the approach required by the Proposed Plans.

NAHB Comments

The Enterprise Equitable Housing Finance Plans should complement existing regulatory requirements to responsibly expand access to credit, while ensuring the Proposed Plans do not create competing priorities or unnecessarily add requirements that become overly burdensome.

NAHB understands FHFA's motivation to require the Enterprises to produce equitable housing finance plans. There is a definite need to ensure mortgage credit is equally available and accessible to qualified consumers who may be denied the opportunity for homeownership due to current standard industry practices. Importantly, there is a current groundswell of support for pushing the industry to make substantive changes to achieve these significant goals of increased minority homeownership and accumulation of wealth through homeownership.

Further, NAHB appreciates FHFA's actions as acknowledgement that as the primary buyers of conventional mortgage loans the Enterprises wield significant influence over the mortgage origination and servicing standards throughout the industry. Requiring the Enterprises to consider how they can apply their influence to help the lending and servicing industries modify practices in ways that will open the door to homeownership for minority borrowers and provide much-needed affordable rental housing in communities across the nation is a significant step. As we have seen, even supposed equal treatment does not necessarily ensure equal opportunities. For example, many housing advocates have expressed concern that the Enterprises' Loan Level Price Adjustments based on the "objective" risk characteristics of a mortgage loan have a disproportionately negative impact on mortgage accessibility and affordability for people of color.

NAHB believes there are ways to increase the pool of minority and low-income borrowers eligible for mortgage credit through the Enterprises by revising certain requirements that have had a disparate impact on minorities and low-income borrowers without compromising the safety and soundness of the Enterprises. However, NAHB advises caution when adding new mandates with quantifiable measures for the Enterprises and urges consideration as to whether desired outcomes expressed in the Proposed Plans can be achieved by the DTS and Housing Goals regulations as well as concerted efforts by the Enterprises to "lean into" their public mission and obligations per their charters. As FHFA considers how it moves forward to advance to the goals and objectives of the Proposed Plans, NAHB urges the agency to take a holistic view of the impact of additional regulations on the Enterprises and their seller/servicers. Regulation is costly and burdensome even when it is important and becomes increasingly so as it is layered on by local, state and federal governments.

The following steps were recently taken by FHFA and the Enterprises:

- Proposed expanded affordable housing goals for both single-family and multifamily loan purchases. Two new single-family subgoals would encourage the Enterprises to purchase owner-occupied mortgage loans in minority census tracts. One subgoal would allow home purchase mortgages on single-family, owner-occupied properties to borrowers with incomes greater than 100 percent of area median income (AMI) in low-income census tracts that also are minority census tracts. This subgoal recognizes that minorities of all income levels have been underserved by the housing industry and minority communities include middle- and upper-income families not only very low-, low- and moderate-income families.
- Aligned fair lending enforcement between FHFA and HUD.
- Suspended recent provisions of the Preferred Stock Purchase Agreements (PSPAs) that were having a problematic impact on the mortgage market. In particular, eliminating the Enterprises' purchase limitation on loans with two or more of the following features: 1) combined LTV ratio above 90 percent at origination; 2) Debt-to-Income ratio above 45 percent; or 3) credit score below 680 will allow increased lending to underserved borrowers.
- Eliminated the 50-basis point adverse market refinance fee for deliveries of refinanced mortgage loans.
- Expanded the income threshold of the Enterprises' refinance options for low-income borrowers from 80 percent of AMI to 100 percent of AMI.
- Developed the capacity to consider borrowers' rental payment history when making an underwriting decision. (Fannie Mae)
- Developed programs to purchase mortgage loans from Housing Finance Agencies (HFAs). The HFA Preferred (Fannie Mae) and HFA Advantage (Freddie Mac) mortgage products for low-to moderate-income borrowers have significant income and fee flexibilities and can include downpayment assistance from the HFAs.
- Increased the Enterprises' annual Low-Income Housing Tax Credits (LIHTC) equity investment caps.

FHFA should closely monitor the data to ensure that these changes are having the intended effect of expanding access to credit.

NAHB Recommendations

NAHB believes the following administrative modifications to the Enterprises' policies could help reduce the homeownership gap by reducing common barriers to mortgage credit availability and affordability and expand the supply of quality, affordable rental housing:

- Increase income thresholds on their affordable loan products, particularly in high-cost areas. As mentioned above, requiring the Enterprises to target affordable housing products to very low-, low-, and moderate-income borrowers is a barrier to mortgage credit by minority borrowers with higher-incomes who need flexibilities such as three percent downpayments and flexible sources of downpayment funds.

- Purchase "workforce housing" loans that serve families with incomes between 60 percent and 120 percent of AMI. Workforce housing is commonly defined as housing affordable to borrowers in this income category, and available financing for workforce housing is not adequate.
    - Add a single-family housing goal for the purchase of owner-occupied, single-family mortgage loans to borrowers with incomes between 60 percent and 120 percent of AMI.
    - Add a multifamily affordable housing goal and for the purchase of mortgage loans on multifamily rental properties with a prescribed number of rental units affordable to families with incomes between 60 percent and 120 percent of AMI.
- Remove unnecessary Loan Level Price Adjustments (LLPAs) on rate term refinances. Borrowers refinancing loans owned by Freddie Mac or Fannie Mae paid an LLPA when the loan was initially originated. This fee should not have to be paid more than once.
- Address the shortage of new housing. NAHB notes that expanding access to mortgage credit, without addressing the supply shortage, will further exacerbate the affordability challenge. NAHB urges the FHFA to allow the Enterprises to create a secondary market for acquisition, development and construction (AD&C) loans to increase the supply of single-family homes. NAHB believes the Enterprises could help increase the supply of affordable housing by being allowed to establish a secondary market for AD&C financing. Banks often are constrained from originating AD&C loans by capital requirements and risk management guidelines that may limit the volume and concentration of AD&C loans in their portfolios. NAHB believes this is an opportune time for FHFA to ask Fannie Mae and Freddie Mac to explore a secondary market outlet for AD&C loans, particularly for community banks, a primary source of AD&C financing. To make an impact, the Enterprises must figure out how to support AD&C financing beyond construction to permanent loans for single-family loans. NAHB believes that an AD&C program can be implemented within the current Enterprise charters.

<u>NAHB offers the following comments on specifics of the Proposed Plans</u>

- Clearly define the terms "housing equity" and "sustainable housing opportunities" since FHFA references "housing equity" and "sustainable housing opportunities" as important outcomes for the Proposed Plans. For example, many NAHB members use the term "sustainable" to refer to "green" building or environmentally sustainable building. The lending industry often refers to sustainable mortgage lending to refer to mortgage loans that the borrower can afford to repay and sustain his or her ownership of the home.
- Ensure that the research conducted by the Enterprises "to identify barriers to sustainable housing opportunity either directly related to the Enterprises' actions or barriers in the housing market that can reasonably be influenced by the Enterprises' actions" includes the impact of regulatory barriers at all levels of government including the actions of federal regulators.
- Update the Enterprises' plans after annual results are posted and can be analyzed. The first three-year plans are due to FHFA by December 31, 2021, and will be updated by the Enterprises annually thereafter. While not addressed in the Proposed Plans, NAHB suggests the Enterprises should not be required to update the plans in December 2022 prior to the progress report of the first year's plans being available in April 2023.
- Avoid blanket directives or one-size-fits-all approaches, which too often have unintended, negative consequences. For instance, FHFA suggests the Enterprises may have a goal of "Increasing sustainable housing opportunities for renters living in multifamily properties financed by the Enterprise's loan purchases, such as by prohibiting source of income discrimination, providing other tenant protections,

requiring reporting of on-time payments to credit bureaus, and facilitating accessibility for persons with disabilities." NAHB opposes "source of income protection" laws, which effectively force private property owners to participate in government subsidy programs, such as HUD's Section 8 Housing Choice Voucher (HCV) Program, without regard to the administrative and financial burdens the programs place on housing providers. "Source of income" mandates on private property owners relieve lawmakers and program administrators of any obligation to improve the HCV program or to create incentives that attract voluntary participation by private landlords. Although NAHB opposes *mandatory landlord participation* in the HCV program, we strongly support the HCV program itself. Many NAHB members do participate in the HCV program, and our organization remains committed to working with HUD, Congress and public housing agencies to improve the program and ensure it is properly funded.

- Engage with all housing stakeholders, including the home building industry. NAHB and our members can provide important insight to the Enterprises as they develop and implement their plans.
- Changes that are implemented should not be deemed made by FHFA only as conservator. Positive changes made by FHFA while the Enterprises are in conservatorship should continue under FHFA as regulator.

Conclusion

Thank you again for the opportunity to provide input on this critical issue. NAHB supports legislation, regulations and housing policies that allow all individuals and families the opportunity to pursue their American Dream and seek the housing of their choice. NAHB members strive to provide quality housing to all communities at all income levels. We hope FHFA will call on NAHB and its members as the agency advances this component of the Enterprises' public mission.

Please contact Rebecca Froass at rfroass@nahb.org or Michelle Kitchen at mkitchen@nahb.org for additional information or to answer any questions you may have regarding these comments.

Sincerely,

Jessica R Lynch

Jessica R. Lynch