MAXINE WATERS, CA
CHAIRWOMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

PATRICK MCHENRY, NC
RANKING MEMBER

July 27, 2020

Dr. Mark Calabria
Director
Federal Housing Finance Agency
400 Seventh Street, SW
Washington, D.C. 20219

Dear Director Calabria:

On May 20, 2020, the Federal Housing Finance Agency (FHFA) announced that it is seeking comments on a re-proposed rule that would establish a new, complex regulatory capital framework for Fannie Mae and Freddie Mac (collectively "the Enterprises"). As the August 31st deadline for comment on this 424 page rule quickly approaches, advocates are raising serious concerns that this rule would have harmful impacts on access to credit for underserved borrowers, including borrowers of color and lower income borrowers.[1] Furthermore, this rulemaking comes at a time when the coronavirus (COVID-19) pandemic continues to inflict serious public health and economic harm in a number of ways. We are concerned that the goals of quickly recapitalizing the Enterprises may inadvertently interfere with the broader economy's recovery from today's crisis. As such, we write to respectfully request that you prioritize economic recovery and pause this rulemaking until after the COVID-19 crisis passes. Further, we ask that you take more time to gather stakeholder feedback and incorporate a detailed analysis on how the rule will affect access to credit for underserved borrowers, including estimates of how many borrowers could be denied access to credit and how much more on average a borrower will have to pay for a mortgage under this rule.

History has shown us that housing is critical to our nation's economic stability and recovery. New home purchases create not just construction jobs , but also jobs connected to the purchase of a variety of items and services for home improvement, such as furniture, appliances, and landscaping. The Enterprises play a critical role in not only providing liquidity to the housing market, but also stabilizing the housing market in times of stress. Unfortunately, we saw a slow economic and housing recovery following the 2008 financial crisis, and we are very concerned that this rule will set a path for us to have another slow recovery by increasing costs for borrowers and hamper the ability of the Enterprises to provide much needed liquidity and stability during and after this unprecedented pandemic. Some estimates show FHFA's proposal will translate into a substantial increase in (g-fees) by 15 to 20 basis points.

Further, we are concerned that the people this rule would hurt the most are people of color, who bore the brunt of the foreclosure crisis that hit in the aftermath of 2008 due in no small part to discriminatory and predatory lending practices. Many communities and people of color have yet to fully recover from the losses they bore as a result of the 2008 crisis, and Black homeownership rates are at the same levels now as they were before housing discrimination was outlawed in this country. We cannot afford to backslide

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[1] National Housing Conference, "Racial Justice and the GSE capital rule: yes they are related," https://www.nhc.org/racial-justice-and-the-gse-capital-rule-yes-they-are-related/, June 2020.

on what little progress we have made by rushing through this capital rule without sufficiently understanding the impacts on people of color.

FHFA must provide sufficient analysis for the public to fully understand how this rule would impact borrowers of color and correspondingly extend the amount of time for public comment. Please provide a detailed fair lending analysis of this proposed rule that includes the estimated number of borrowers who will be denied access to Enterprise-backed loans as a result of this rule, including a breakdown of what percentage of those borrowers are borrowers of color. Such analysis should also include an estimate of the average increase in mortgage costs this rule would result in, including a breakdown of the average increase for borrowers by race and ethnicity. The 60-day time frame for comments is simply untenable for such a lengthy and complex proposal with such broad implications for the housing and mortgage markets even during normal conditions, but egregiously so during a global pandemic when stakeholders, some with limited resources, are unable to provide meaningful feedback on a proposal that lacks sufficient analysis to fully understand its impacts.[2]

As your proposed rule has an entire section comparing the proposed regime to the bank capital regime – "XIII. Comparisons to the U.S. Banking Framework" – we would note that federal banking regulators have often provided extensive comment periods of 120 days or greater for complex rulemaking on related issues. For instance, for a rule on risk-based capital requirements, the Board of Governors of the Federal Reserve System (Federal Reserve), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and the now-defunct Office of Thrift Supervision (OTS) provided an initial comment period of approximately 120 days, which was extended an additional 60 days, for a total of 180 days.[3] Additionally, for a package of rules implementing the Basel III regulatory capital reforms from the Basel Committee on Banking Supervision and changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Federal Reserve initially provided a 90 day comment period, which was extended another 45 days, for a total of 135 days.[4] Due to the complexity of this rulemaking, the Federal Reserve did not finalize the rule until more than a year after the proposal was made.

Compared to 2010, we are now suffering from an even deeper economic decline. In addition, we have developed a shortage of millions of homes over the last decades. For both reasons, it is even more important that we allow home sales and home construction to play their traditional roles in economic

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[2] For example, see March 30, 2020, Letter from Rebeca Romero Rainey, President and CEO, Independent Community Bankers of America (ICBA) to The Honorable Mark Calabria, Director, FHFA et al, https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/icbas-covid-19-agency-rulemaking-delay-letter.pdf?sfvrsn=95fb2b17_0, ("On behalf of community banks nationwide, ICBA respectfully requests that the agencies institute a delay of all non-COVID-19 related rulemaking activities by 180 days, subject to further delays if necessary…. The resources required to effectively respond and advocate positions during the rulemaking process have understandably shifted to responding to this crisis. Community bankers are passionate advocates who often respond to comment requests, directly or in collaboration with ICBA, with thoughtful positions, specific details, and empirical data. But all of this requires time and resources – both of which are substantially strained at this time.")

[3] See "Proposed Rule by the Treasury Department, the Federal Reserve System, and FDIC on Risk-Based Capital Standards: Advanced Capital Adequacy Framework" (Sep. 25, 2006) with an initial comment period of approximately 120 days that was extended an additional 60 days in a notice published on Dec. 26, 2006 (71 FR 77518).

[4] See "Federal Reserve Board invites comment on three proposed rules intended to help ensure banks maintain strong capital positions," (Jun. 7, 2012) stating comments due in 90 days; "Federal Reserve Board extends comment period on three proposed capital rules rulemakings until October 22, 2012" (Aug. 8, 2012); "Federal Reserve Board approves final rule to help ensure banks maintain strong capital positions" (Jul. 2, 2013).

recovery. Therefore, given the significance of this complex proposal and due to the unprecedented nature of the COVID-19 pandemic, which is greatly challenging homeowners, renters, consumers, and the broader economy, we urge you to suspend this proposed rulemaking until after the crisis passes, and otherwise avoid increasing costs on homebuyers and homeowners looking to refinance in the short term. Moreover, we urge you to use your powers under Title 5 of U.S.C. §§ 551-559, the Administrative Procedures Act (APA) to engage meaningfully with all stakeholders. The APA establishes the many ways agencies can engage with the public when setting their rulemaking agenda. While Congress can legislatively require a formal rulemaking hearing, we request that you use your voluntary discretion to engage the public and hold a series of public hearings or roundtables on the proposed regulatory capital framework for the Enterprises to ensure impacted stakeholders from across the country have an opportunity to discuss their views and concerns directly with you and the agency's staff.

We appreciate your consideration of this important request, and we look forward to your response. If you have any questions about this letter, please contact us at 202.225.2406.

Sincerely,

Wm. Lacy Clay

The Honorable Wm. Lacy Clay
Chairman
Subcommittee on Housing, Community Development and Insurance

Denny Heck

The Honorable Denny Heck
Member of Congress

Maxine Waters

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services

Cc: The Honorable Patrick McHenry, Ranking Member