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Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Eighth Floor, 400 Seventh Street, SW
Washington, DC 20219

RE: Comments/RIN 2590-AB12 Enterprise Housing Goals Advance Notice of Proposed Rulemaking

Dear Mr. Pollard:

The Housing Policy Council[1] (HPC) appreciates the opportunity to comment on the Federal Housing Finance Agency's (FHFA) advance notice of proposed rulemaking (the ANPR) on the Enterprise (GSE) housing goals.[2] HPC members, as strong advocates for access to sustainable and affordable home financing for low- and moderate- income borrowers, support an update to the existing regulations based on lessons learned in executing the Enterprise Housing Goals.

Specific Comments and Recommendations

<u>FHFA Should Encourage Congress to Amend the Enterprise Housing Goals Legislation</u>

In spite of the good intentions and positive expected outcomes that were promoted when the Affordable Housing Goals legislation was enacted in 1992, there is limited evidence that the Enterprise housing goals have helped to expand low-income homeownership. In fact, just this past January, President Biden signed an Executive Order that asserted that "throughout much of the 20th century, the Federal Government systematically supported discrimination and exclusion in housing and mortgage lending" and "*that the effects of these policy decisions continue to be felt today*."[3] This is also seen in the well documented fact that only about 42

[1] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org
[2] 85 Fed. Reg. 245 (December 21, 2020).
[3] Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies, January 26, 2021.

percent of Black households own a home compared with 72 percent for Whites, a gap that hasn't improved in nearly 50 years.[4]

Since it well understood that homeownership is a critical component of family wealth, particularly for low-income families and people of color, this has far reaching implications on the racial wealth gap.[5] Unfortunately, this persistent homeownership and household wealth differential has occurred in spite of the fact that the Enterprise housing goals have been in place for the last 28 years. Even more shocking is that even with the Enterprise housing goals in place, in 2019, just 3.87% of all of loans acquired by Fannie Mae, and 4.2% by Freddie Mac went to black borrowers.[6] It is hard to look at these numbers and say that current structure of the Enterprise housing goals has been sufficient, let alone successful.

The driving factor for why the Enterprise housing goals have been unable to move the needle on addressing these structural challenges is that the authorizing legislation itself is largely limited to encouraging support for affordable housing through mortgage production targets that are supported primarily through the cross-subsidization of mortgage rates. To achieve the goals, the Enterprises offer relaxed underwriting criteria and pricing benefits to some consumers who might not otherwise qualify for a mortgage. Practically speaking, the cross-subsidization model allows the GSEs to charge lower-risk borrowers a higher guarantee fee than needed to account for their risk, and higher-risk borrowers a lower guarantee fee than is necessary to account for their risk.

One significant problem with this approach is that, with an inelastic housing supply, continued subsidization of the mortgage rate has the counter-productive effect of boosting home prices. Simply put, making it less expensive to borrow money to purchase a commodity in short supply (houses) results in the added demand increasing the sales price. In effect, the subsidy ends up going to the home seller, not the home buyer. And that has the perverse effect of making housing less affordable, not more affordable.

Also, credit risk is not a precise or inherently good proxy for borrower income; as a result, cross-subsidization is also provided to borrowers who aren't low-and moderate income. Thus, under the current system low- and moderate-income borrowers with a strong credit history who put down 20% to buy a home are subsidizing higher-income borrowers with weaker credit that choose to put down a lower down payment. The Urban Institute has estimated that approximately 23% of those receiving a cross-subsidy under the current Enterprise housing goals system are not low or moderate-income households.[7] In fact, the ANPR itself identifies that for the Low-Income Area Home Purchase Goal, it is common for 40% of Enterprise housing goals qualifying loans to be made to borrowers who are not low-and moderate income

[4] https://www.census.gov/housing/hvs/files/currenthvspress.pdf

[5] Thomas Shapiro, The Roots of the Widening Racial Wealth Gap: Explaining the Black White Divide, available at http://iasp.brandeis.edu/pdfs/Author/shapiro-thomas-m/racialwealthgapbrief.pdf.

[6] Fannie Mae AHAR, Freddie Mac AHAR

[7] Access and Affordability in the New Housing Finance System, Urban Institute, February 2018

households.[8] Not only does this raise the questions identified in the ANPR about whether this fuels gentrification and displacement, it also raises the question of whether the goals are actually effectively serving low-and moderate-income borrowers.

The overall value of the cross-subsidization of mortgage rates to support the Enterprise housing goals is estimated to be $3.8 billion annually.[9] Instead of going towards cross-subsidization, this same amount of funding could be targeted directly to supporting low-and moderate-income borrowers, in the form of subsidies that explicitly provide financial assistance to the borrower and thus reduce the risk of the transaction. Examples of this form of direct financial support would include funds for a down payment and closing costs to boost the initial equity position of the borrower, buying down the rate and/or shortening the loan amortization period to enhance equity and wealth building, creating reserves after closing to provide adequate cash availability for possible future financial hardship, or other borrower-focused assistance. If Congress were to make this legislative fix to the Enterprise housing goals statute – to explicitly permit directed borrower support, perhaps using the same definitions of low-income borrowers as in the current rule – the result could be a more efficient, transparent, and accountable mechanism for supporting the affordable housing missions of the GSEs.

Additional Enhancements to the Enterprise Housing Goals Regulation and Process

Without legislative fixes, the ANPR reasonably asks how FHFA can ensure that loans receiving housing goals credit are sustainable. The simplest way to address this question is for FHFA to provide more transparency about the historical performance of qualifying loans. To that end, FHFA should supplement the Annual Housing Report and/or the Annual Report to Congress to include a section on the current and historical performance of loans that receive housing goals credit. Thus, for the 2021 annual report(s), FHFA should not only disclose the 2020 performance of loans counted towards the Enterprise housing goals, but also provide data for the full population of loans that have received housing goals credit. This simple transparency would allow stakeholders to compare the performance of loans across the overall GSE book of business, and to other similarly situated products like FHA, USDA, and VA mortgages.

Providing this data would not only help to inform future Enterprise housing goal rulemakings but could also highlight the need for further changes to underwriting policy or limits on risk-layering, as queried in the ANPR. If the data were to show that an inappropriate number of loans receiving goals credit are unsustainable for borrowers, then FHFA should consider excluding from goals-credit all loans with early payment defaults or loans that become seriously delinquent within the first year. If borrowers are getting into trouble early in their mortgage, this is a reasonable indicator that the loans were not sustainable for those borrowers, and thus the GSEs should not be rewarded for purchasing these loans. In other words, this change would produce an incentive for the GSEs to determine that the loans they purchase are sustainable.

[8] 82968 Federal Register / Vol. 85, No. 245 / Monday, December 21, 2020
[9] Access and Affordability in the New Housing Finance System, Urban Institute, February 2018

Similarly, FHFA should use the Annual Housing Report and/or the Annual Report to Congress to publish information about the risk characteristics of loans receiving housing goals credit. The ANPR raises concerns about whether loans with excessive risk-layering should be excluded from receiving housing goals credit. For the public to fairly assess this, FHFA should publish information on the volume of loans with risk-layering that receive housing goals credit, the annual performance of these loans, and demographic information about these loans to analyze fair lending impacts. This level of information would help policy makers and other stakeholders identify elevated risk posed and determine if the level of risk raises safety and soundness concerns, whether the loans are actually helping to promote sustainable homeownership, and whether eliminating these loans might pose fair lending concerns.

The ANPR also asks what areas should count for credit under the low-income area goal (potentially including Opportunity Zones). HPC reiterates the point above, that no matter the area, loans made to low- and moderate-income borrowers should receive priority in housing goals credit and non-low-and moderate-income borrower lending should be capped at a reasonable percentage, allowing the Enterprises to effectively facilitate investment in communities, while not being overly reliant on loans from above average income borrowers to meet the low-income area goal. Such an approach would not only more effectively target the Enterprise provided cross-subsidy, but it would also limit the Enterprises' incentive to purchase loans that fuel gentrification and displacement concerns.

Lastly, HPC supports the GSE role in expanding access to homeownership for underserved groups, and thus calls on the GSEs to continue outreach and education efforts to serve these populations. Both GSEs go to great lengths to discuss special affordable housing partnerships in their Annual Housing Activities Report. However, currently neither the FHFA Annual Housing Report nor the Annual Report to Congress attempt to evaluate the efficacy of these partnership efforts in any way. Even if FHFA highlighted just a few of the successful GSE efforts, it would reinforce the importance of these activities for the Enterprises (potentially in a "noteworthy" section of the report(s)).

Conclusion

Thank you for your consideration of these recommendations. If you have any questions or would like to discuss these comments, please contact Meg Burns, EVP for the Housing Policy Council, at 202-589-1926.

Yours truly,

Edward J. DeMarco

Edward J. DeMarco
President
Housing Policy Council