May 10, 2023

Director Sandra L. Thompson
Federal Housing Finance Agency
Constitution Center
400 Seventh Street, SW
Washington, DC 20219

Re: Enterprise Regulatory Capital Framework

Dear Director Thompson:

The National Fair Housing Alliance® ("NFHA™")[1] appreciates the opportunity to comment on the Federal Housing Finance Agency's ("FHFA") Notice of Proposed Rulemaking on the Enterprise Regulatory Capital Framework ("ERCF").[2] We commend FHFA for seeking input on this important topic and we hope that our comments below will help inform FHFA's views.

To begin with, we want to remind FHFA of the key recommendations we described in the comment letter regarding the ERCF dated November 23, 2021:[3]

- The ERCF final rule should be consistent with the GSEs' mission to serve the whole of the market, including consumers and communities of color.
- The ERCF proposed rule should be reviewed for fair lending risk.
- To promote a more equitable housing finance market, FHFA should eliminate the Loan Level Pricing Adjustments ("LLPAs") put in place in response to the Great Recession.

With respect to this proposed rule, we offer the following comments:

Multifamily risk multiplier. The proposed rule would introduce a risk multiplier equal to 0.6 for any multifamily mortgage exposures secured by one or more properties each with at least one applicable government subsidy, subject to certain affordability criteria.[4] FHFA estimates that

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[1] The National Fair Housing Alliance® ("NFHA™") leads the fair housing movement. NFHA works to eliminate housing discrimination and ensure equitable housing opportunities for all people and communities through its education and outreach, member services, public policy, advocacy, housing and community development, tech equity, enforcement, and consulting and compliance programs.
[2] FHFA, *Notice of Proposed Rulemaking regarding the Enterprise Regulatory Capital Framework,* 88 Fed. Reg. 15306 (March 13, 2023), https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Enterprise-Regulatory-Capital-Framework-Amendments.aspx.
[3] *See* NFHA Press Release, *NFHA and Advocates Urge the Federal Housing Finance Agency to Adopt a Regulatory Capital Framework That Promotes Racial Equity* (Nov. 23, 2021), https://nationalfairhousing.org/nfha-and-advocates-urge-the-federal-housing-finance-agency-to-adopt-a-regulatory-capital-framework-that-promotes-racial-equity/.
[4] 88 Fed. Reg. 15309.

under the proposed rule, required CET1 capital for the Enterprises' multifamily mortgage exposures as of June 30, 2022 would decline by approximately $0.4 billion.

Generally, we support this proposal, but encourage FHFA to think more broadly about which mortgages should receive the risk multiplier. FHFA should ensure that the proposed approach would fulfill FHFA's mandate under the Fair Housing Act to affirmatively further fair housing.[5]

Representative credit scores for single-family mortgage exposure. The proposed rule would require an Enterprise to calculate the average credit score for each borrower rather than using the median or lowest score (which is the current approach).[6] This proposal would reflect FHFA's recent policy change to require lenders to provide credit reports from only two of the three national consumer reporting agencies, rather than all three.[7] FHFA estimates that under the proposed rule, the total CET1 capital required to meet the risk-based capital requirements for the Enterprises' single-family mortgage exposures as of June 30, 2022 would decline by less than $0.1 billion.

Generally, we support this proposal as well as FHFA's policy change approving both the FICO 10T credit score model and the VantageScore 4.0 credit score model for use by the Enterprises.[8] However, we caution that the credit scoring system in many ways embeds and reflects the nation's history of discrimination in financial services.[9] We encourage FHFA to continue to seek less discriminatory models.

Original Credit Scores for Single-Family Mortgage Exposures Without a Representative Original Credit Score, The proposed rule would require an Enterprise to assign an original credit score of 680 to a single-family mortgage exposure without a permissible credit score at origination rather than a score of 600 (which is the current approach).[10] FHFA estimates that under the proposed rule, required CET1 capital for the Enterprises' single-family mortgage exposures as of June 30, 2022 would decline by less than $0.1 billion.

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[5] 42 U.S.C. § 3608(d).
[6] 88 Fed. Reg. 15311.
[7] FHFA Press Release, *FHFA Announces Validation of FICO 10T and VantageScore 4.0 for Use by Fannie Mae and Freddie Mac* (Oct. 24, 2022), https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Validation-of-FICO10T-and-Vantage-Score4-for-FNM-FRE.aspx.
[8] NFHA Press Release, *The National Fair Housing Alliance Applauds the Federal Housing Finance Agency's New Policies to Promote Equitable Lending* (Oct. 25, 2022), https://nationalfairhousing.org/the-national-fair-housing-alliance-applauds-the-federal-housing-finance-agencys-new-policies-to-promote-equitable-lending/.
[9] *See* Sarah Ludwig, *Credit Scores in America Perpetuate Racial Injustice. Here's How*, The Guardian (Oct. 13, 2015), https://www.theguardian.com/commentisfree/2015/oct/13/your-credit-score-is-racist-heres-why; Lisa Rice and Deidre Swesnik, *Discriminatory Effects of Credit Scoring on Communities of Color*, 46 Suffolk U. L. Rev. 935, 952-959 (2013), https://cpb-us-e1.wpmucdn.com/sites.suffolk.edu/dist/3/1172/files/2014/01/Rice-Swesnik_Lead.pdf.
[10] 88 Fed. Reg. 15312.

Generally, we support this proposal, but want to emphasize the importance to consumers of color of addressing the challenge of the "credit invisible." For example, the Consumer Financial Protection Bureau found that Black and Latino consumers are more likely than White or Asian consumers to be credit invisible or to have unscored credit records.[11] About 15 percent of Black and Latino consumers are credit invisible (compared to 9 percent of White and Asian consumers) and an additional 13 percent of Black consumers and 12 percent of Latino consumers have unscored records (compared to 7 percent of White consumers). We encourage FHFA to continue to seek the least discriminatory approach to address this complex issue.

Thank you for considering our views.

Sincerely,

National Fair Housing Alliance

[11] Consumer Financial Protection Bureau, *Data Point: Credit Invisibles* (May 2015), https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.