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October 28, 2014

The Honorable Melvin L. Watt, Director
Federal Housing Finance Agency
400 7th Street SW, Ninth Floor
Washington, DC 20024

Re: RIN 2590-AA65: 2015-2017 Enterprise Housing Goals

Dear Director Watt:

On behalf of The Leadership Conference on Civil and Human Rights, we write in response to the Federal Housing Finance Agency's (FHFA) request for comment regarding the 2015-2017 Enterprise Housing goals' proposed rule. We greatly appreciate the leadership you have shown to date at FHFA to ensure the financial safety and soundness of the government sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, and for policies that will help to secure a fair and affordable housing market.

Homeownership is a critical means for building financial security and for moving more Americans into the middle class. While our national economy has significantly improved since the financial crisis of 2008, we remain concerned about the mobility of the middle class. Since the 2008 housing crisis, communities of color have moved farther away from being able to achieve equity and prosperity through homeownership. More specifically, the black-white homeownership gap over the past decade has widened significantly, from 26.1 percent to 30.4 percent. Similarly, young people are less likely to become homeowners in this new economy. The perception that homeownership is unavailable is also higher in communities of color. Sixty-three percent of Hispanic homeowners believe it would be difficult to get a home mortgage today, compared to 40 percent of the general population of owners. We must do all that we can to enact policies that will help spur economic growth and ensure that more low- and moderate-income Americans can achieve the American dream of homeownership. FHFA can lead on this, do it responsibly, and do it without putting taxpayers at risk.

We believe there are two pieces to meeting these goals. First, particularly given the likely demise of GSE "overhaul" legislation on Capitol Hill, it is clear that any successful policy to promote affordable homeownership must involve strong leadership by Fannie Mae and Freddie Mac. These agencies are vitally important to the continued growth of our nation's housing market, and to the ability of consumers to continue obtaining affordable, 30-year, fixed-rate mortgages. In its current form, pending legislation to eliminate the GSEs would be counterproductive; it would negatively impact communities of color and young people, and it would impede our ability to grow our nation's middle class.

Second, the GSEs require capital if they are to serve their historic mission. As your agency embarks upon decision-making on affordable housing policy, it naturally must be balanced with FHFA's statutory obligation as conservator to the safety and soundness of these enterprises. We applaud FHFA for its announcement this week on the expansion of lending



to middle class borrowers, but this expansion will require capital. We note that some of the current proposals to raise g-fees and to impose new requirements on private mortgage insurers will increase the costs of borrowing, and would still fall short of building the capital needed to grow a robust and healthy housing market. This is especially true given the GSE's status in, what Congresswoman Maxine Waters (D-CA) describes as seemingly "permanent conservatorship," where they are unable to rebuild capital.

In light of this, in order to ensure the best path forward for increasing homeownership in the communities we represent, we believe it is vital to initiate serious discussions about unwinding the conservatorship and allowing Fannie and Freddie to begin rebuilding their capital. Both agencies have become profitable, and could remain so while still giving the taxpayers a large return on the government's investment. We are not suggesting this be done without significant reforms to ensure that all markets are being served fairly, and without important safeguards for the taxpayer. Fannie and Freddie can be fixed; discarding them in entirety would be a colossal mistake. Under the proposed replacements for Fannie Mae and Freddie Mac, such as the committee-passed versions of the Johnson-Crapo or Hensarling bills, it is clear to us that the current affordable housing benefits provided by the GSEs (*see attachment "GSE Affordable Housing Activities"*) simply cannot be replicated in a new untested system.

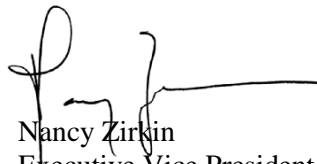
We look forward to working with FHFA to formulate a plan that increases homeownership for more Americans, while further reducing the liability as a result of another catastrophic event on the backs of taxpayers. Exploring an end to the conservatorship and allowing the enterprises to build capital should be an important component of this effort.

Thank you for your consideration of our views. If you have any questions, please contact either of us, or Senior Counsel Rob Randhava, at (202) 466-3311.

Sincerely,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President

GSE Affordable Housing Activities

- *Overview.*
 - Fannie Mae and Freddie Mac (each an “enterprise”) are subject to three statutory requirements relating to affordable housing.
 - Each enterprise must make contributions to two affordable housing trust funds that make grants to the states and certain lenders and non-profits to finance affordable housing activities.¹
 - Each enterprise also must seek to achieve certain affordable housing goals in its purchases of single-family and multi-family mortgages.²
 - Each enterprise is also subject to a separate duty to serve certain underserved markets, which may be satisfied in part through assistance to existing federal and state affordable housing programs.³
 - These activities are in furtherance of each enterprise’s mandate, as established by its federal charter, to engage in secondary mortgage market “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” and “promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas).”⁴
 - The enterprises’ conservatorship has impacted these affordable housing activities. FHFA has suspended contributions to the two housing trusts. FHFA is required by statute to establish a method for rating each enterprise’s compliance with its duty to serve underserved markets,⁵ but has not finalized its proposed rule,⁶ perhaps in part due to the conservatorships.
- *Affordable housing trust funds.*
 - Each enterprise is supposed to contribute 4.2 basis points of its “total new business purchases” to two trust funds that finance affordable housing activities.⁷

¹ 12 U.S.C. § 4567.

² *Id.* §§ 4562, 4563.

³ *Id.* § 4565.

⁴ *Id.* §§ 1451, 1716.

⁵ *Id.* § 4565(d).

⁶ *Notice of Proposed Rulemaking, Enterprise Duty To Serve Underserved Markets*, 75 Fed. Reg. 32,099 (June 7, 2010).

⁷ 12 U.S.C. § 4567.

- The Housing Trust Fund, which is administered by HUD, receives 65% of these contributions, which HUD uses to make formula-based grants to the states to increase the supply of affordable housing, especially rental housing.⁸
- The Capital Magnet Fund, which is administered by the Treasury Department's Community Development Financial Institutions ("CDFI") Fund, receives the other 35% and awards grants to Treasury-certified CDFIs and qualified non-profits to support affordable housing and economic development activities.⁹
- o FHFA is authorized to suspend these contributions in certain circumstances.¹⁰ It exercised that authority shortly after the enterprises were placed into conservatorship in 2008.¹¹ According to the CBO, roughly \$600 million would have been contributed to these two funds in 2014 if contributions had not been suspended.¹²
- *Affordable housing goals.*
 - o In addition to contributing to these trust funds, each enterprise is subject to goals for purchases of mortgages from low-income borrowers and low-income areas.¹³ These goals have remained in effect during the enterprises' conservatorships.
 - o These goals indirectly increase the supply of credit, and thereby lower the cost of credit, for the targeted borrower populations.
 - o FHFA has established three single-family housing goals for home purchase mortgages. The current benchmarks are:
 - Low-Income Families Home Purchase Benchmark: At least 23% of each enterprise's acquisitions of single-family owner-occupied purchase money mortgage loans must be affordable to low-income families (defined as income equal to or less than 80% of area median income).¹⁴
 - Very Low-Income Families Home Purchase Benchmark: At least 7% of acquisitions of single-family owner-occupied purchase money mortgage loans must be affordable

⁸ *Id.* §§ 4567(a)(1)(B)(i), 4567(a)(2)(B)(i).

⁹ *Id.* §§ 4567(a)(1)(B)(ii), 4567(a)(2)(B)(ii).

¹⁰ *Id.* § 4567(b).

¹¹ *Housing Trust Fund*, Proposed Rule, 75 Fed. Reg. 66,978, 66,978 (Oct. 29, 2010).

¹² U.S. Congressional Budget Office, *Cost Estimate: H.R. 3221, Housing and Economic Recovery Act of 2008* (July 23, 2008), p. 3, available at <http://www.cbo.gov/ftpdocs/95xx/doc9597/hr3221.pdf>; U.S. Congressional Budget Office, *Cost Estimate: Federal Housing Finance Regulatory Reform Act of 2008* (June 9, 2008), pp. 3, 5-6, available at http://www.cbo.gov/ftpdocs/93xx/doc9366/Senate_Housing.pdf.

¹³ *Id.* §§ 4562, 4563.

¹⁴ *2012-2014 Enterprise Housing Goals*, 77 Fed. Reg. 67,235, 67,536 (Nov. 13, 2012).

- to very low-income families (defined as income equal to or less than 50% of area median income).¹⁵
- Low-Income Areas Home Purchase Goal Benchmark: This benchmark is set annually by notice from FHFA. For 2013, at least 21% of acquisitions of single-family owner-occupied purchase money mortgage loans must have been for families who reside in low-income census tracts and for moderate-income families (defined as families with income no higher than 100% of the area median income) who reside in minority census tracts or designated disaster areas.¹⁶
 - o FHFA also established a subgoal for home purchase mortgages:
 - Low-Income Areas Home Purchase Subgoal Benchmark: At least 11% of acquisitions of single-family owner-occupied purchase money mortgage loans must be affordable to families in low-income census tracts or to moderate-income families in high-minority census tracts.¹⁷
 - o There is also one single-family housing goal for refinance mortgages.
 - Low-Income Families Refinancing Benchmark: At least 20% of acquisitions of single-family owner-occupied refinance mortgage loans must be affordable to low-income families.¹⁸
 - o There are two multifamily housing goals: a goal for the total number of units affordable to low-income families (income no greater than 80 percent of area median income) and a subgoal for the total number of units affordable to very low-income families (income no greater than 50 percent of area median income).
 - The multifamily goals for 2014 are 250,000 dwelling units for Fannie Mae and 200,000 dwelling units for Freddie Mac. The multifamily subgoals for 2014 are 60,000 dwelling units for Fannie Mae and 40,000 dwelling units for Freddie Mac.¹⁹
 - *Duty to serve underserved markets.*
 - o The enterprises also have a separate statutory obligation to serve three underserved markets – manufactured housing, affordable housing preservation and rural areas – by developing loan products and flexible underwriting guidelines to facilitate the secondary market for mortgages in these markets.²⁰

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 67,537.

²⁰ 12 U.S.C. § 4565.

- o FHFA is tasked with developing a method for rating each enterprise's performance with respect to each underserved market.²¹ FHFA has not yet issued a final rule to implement this duty to serve.
- o Under FHFA's proposed rule, each enterprise would submit an underserved markets plan that would specify benchmarks upon which its performance would be rated.²²
- o This duty to serve may be satisfied, in part, by the enterprise's assistance to a variety of existing affordable housing programs,²³ including:
 - the project-based and tenant-based rental assistance programs under Section 8 of the United States Housing Act of 1937;²⁴
 - the rental and cooperative housing for lower income families program under Section 236 of the National Housing Act;²⁵
 - the below-market interest rate mortgage program under Section 221(d)(4) of the National Housing Act²⁶ that promotes housing for moderate-income and displaced families;
 - the supportive housing for the elderly program under Section 202 of the Housing Act of 1959;²⁷
 - the supportive housing program for persons with disabilities under Section 811 of the Cranston-Gonzalez National Affordable Housing Act;²⁸
 - the programs under title IV of the McKinney-Vento Homeless Assistance Act²⁹ (but only permanent supportive housing projects subsidized under those programs);
 - the rural rental housing program under Section 515 of the Housing Act of 1949;³⁰

²¹ *Id.* § 4565(d).

²² 75 Fed. Reg. at 32,099. Those benchmarks would be required to address each of the statutory assessment factors: (i) the enterprise's development of loan products, more flexible underwriting guidelines and other approaches to providing financing to each underserved market; (ii) the enterprise's outreach to loan sellers and other market participants in each underserved market; (iii) the volume of loans purchased by the enterprise in each underserved market; and (iv) the enterprise's investments and grants in projects in that underserved market. *Id.* at 32,100.

²³ 12 U.S.C. § 4565(a)(1)(B); 75 Fed. Reg. at 32,106.

²⁴ 42 U.S.C. § 1437f.

²⁵ 12 U.S.C. § 1715z-1.

²⁶ *Id.* § 1715l.

²⁷ *Id.* § 1701q.

²⁸ 42 U.S.C. § 8013.

²⁹ *Id.* § 11361 et seq.

³⁰ *Id.* § 1485.

- the low-income housing tax credit (“LIHTC”) programs under Section 42 of the Internal Revenue Code of 1986;³¹ and
 - comparable state and local affordable housing programs.
- *Affordable housing partnerships.*
 - o Each enterprise also undertakes a variety of affordable housing activities in partnership with nonprofit and for-profit organizations, state and local government and housing agencies.³²
 - o Some of the enterprises’ notable partnerships include:
 - Since 2009, Fannie Mae, along with Freddie Mac and State Street Global Advisors, has served as the lead organizations managing the HFA Initiative, which assists state and local housing and finance agencies’ (“HFAs”) lending programs.³³
 - In 2013, Fannie Mae purchased 17,381 loans from HFAs with an unpaid principal balance of \$2,861,000,000.³⁴
 - Fannie Mae invested \$5 million nationwide in 2013 to support nonprofit partners focused on foreclosure prevention, sustainable homeownership, neighborhood stabilization, affordable housing and the prevention of homelessness.³⁵
 - In 2013, Fannie Mae facilitated the sale of four multifamily properties with over 500 units to nonprofits and public entities involved in affordable housing.³⁶
 - In 2013, Fannie Mae helped provide financing for almost 13,000 LIHTC units of housing by providing \$519 million for debt financing on LIHTC projects via its lending partners, and also supported its ongoing investment in over 4,100 affordable housing LIHTC projects.³⁷
 - In 2013, Freddie Mac supported the Making Home Affordable program through outreach initiatives, events and activities with housing professionals (including 43

³¹ 26 U.S.C. § 42.

³² See Fannie Mae, *2013 Annual Housing Activities Report and Annual Mortgage Report* (March 13, 2014), available at <http://www.fanniemae.com/resources/file/aboutus/pdf/2013ahar.pdf>; Freddie Mac, *Annual Housing Activities Report for 2013* (March 12, 2014), available at http://www.freddiemac.com/corporate/company_profile/docs/2013_Freddie_Mac_AHAR.pdf.

³³ Fannie Mae, *2013 Annual Housing Activities Report and Annual Mortgage Report* at 11 (March 13, 2014), available at <http://www.fanniemae.com/resources/file/aboutus/pdf/2013ahar.pdf>.

³⁴ *Id.* at 12.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

- borrower outreach events and 58 trainings and educational sessions for housing counselors on foreclosure alternatives).³⁸
- Freddie Mac continued to maintain “Borrower Help Centers” with selected non-profit organizations in several metropolitan areas to provide delinquent borrowers with free, in-person, face-to-face financial reviews and counseling assistance.³⁹
 - Freddie Mac also undertakes numerous outreach initiatives designed to expand homeownership opportunities in minority and underserved communities in states and localities across the country.⁴⁰
- *First-time home buyers.*
 - o Each enterprise maintains several programs to facilitate homeownership opportunities for first-time homebuyers.⁴¹
 - o In 2013, 42.8% of the mortgage loans purchased by Fannie Mae were made to first-time homebuyers. Fannie Mae products facilitating homeownership include MyCommunity Mortgage, HFA Preferred, HFA Preferred Risk Sharing, Home Path and Non-HFA Community Scorecards.⁴²
 - o In 2013, 37.6% of the mortgage loans purchased by Freddie Mac were made to first-time homebuyers. Freddie Mac also supported the HFA Initiative.⁴³

³⁸ Freddie Mac, *Annual Housing Activities Report for 2013* at 15-16 (March 12, 2014), available at http://www.freddiemac.com/corporate/company_profile/docs/2013_Freddie_Mac_AHAR.pdf.

³⁹ *Id.* at 16.

⁴⁰ *Id.*

⁴¹ *Id.* at 7; Fannie Mae, *2013 Annual Housing Activities Report and Annual Mortgage Report* at 5 (March 13, 2014), available at <http://www.fanniemae.com/resources/file/aboutus/pdf/2013ahar.pdf>.

⁴² Fannie Mae, *2013 Annual Housing Activities Report and Annual Mortgage Report* at 5 (March 13, 2014), available at <http://www.fanniemae.com/resources/file/aboutus/pdf/2013ahar.pdf>.

⁴³ Freddie Mac, *Annual Housing Activities Report for 2013* at 7 (March 12, 2014), available at http://www.freddiemac.com/corporate/company_profile/docs/2013_Freddie_Mac_AHAR.pdf.