June 26, 2023

Clinton Jones, General Counsel
Attention: Comments/RIN 2590-AB29
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC, 20219

Re: "Comment on Proposed Rule: Fair Lending, Fair Housing, and Equitable Housing Finance Plans" (RIN 2590–AB29)

Dear Mr. Jones,

I appreciate this opportunity to respond to the Federal Housing Finance Agency's (FHFA) proposed rule, "Fair Lending, Fair Housing, and Equitable Housing Finance Plans."[1]

Background

A. The FHFA, the GSEs, and Their Public Purposes

The FHFA was established in 2008 with the stated mission to ensure that its "regulated entities fulfill their mission by operating in a safe and sound manner to serve as a reliable source of liquidity and funding for the housing finance market throughout the economic cycle." These regulated entities, commonly referred to as government-sponsored entities (GSEs), fulfill the FHFA's mission by promoting capital flows to targeted sectors of the economy in a variety of ways, while the FHFA supervises and ensures the safety and soundness of the GSEs' practices. Among the most well-known GSEs are Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System.

Fannie Mae and Freddie Mac are federally chartered housing finance enterprises whose purposes include providing stability to the secondary market for residential mortgages; providing ongoing assistance to the secondary market for residential mortgages (including activities related to mortgages on housing for low- and moderate-income families) by increasing the liquidity of mortgage investments and improving distribution of investment capital available for residential mortgage financing; and, promoting access to mortgage credit throughout the United States, including central cities, rural areas, and underserved areas, by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.[2]

The Federal Home Loan Bank System (the System) provides a source of liquidity for its members and provides support for affordable housing and community development for the

[1] "Fair Lending, Fair Housing, and Equitable Housing Finance Plans," Federal Housing Finance Agency, Proposed Rule, Federal Register, Vol. 88, No. 80, April 26, 2023, pp. 25293-25309 https://www.govinfo.gov/content/pkg/FR-2023-04-26/pdf/2023-08602.pdf.
[2] 12 U.S.C. 1451 (note) and 1716.

communities they serve.[3] Each Bank within the System is a separate, government-chartered, member-owned corporation.

Congress established FHFA to oversee the regulated entities to ensure that the purposes of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended, the authorizing statutes, and any other applicable laws are carried out.[4] In doing so, Congress recognized that the regulated entities have important public purposes reflected in their authorizing statutes, and that they need to be managed safely and soundly so that they continue to accomplish their public missions.[5]

B. The Proposed Rule

Under the guise of advancing the missions of the GSEs, the FHFA proposes new requirements relating to fair lending, fair housing, and—most importantly—Equitable Housing Finance Plans. The proposed rule requires each GSE to submit an "equitable housing finance plan" covering a three-year period. The plan must identify "barriers" to "sustainable housing opportunities" faced by "underserved communities."[6] The plan must then propose "objectives" relating to the identified "barriers" and the "meaningful actions" the GSEs intend to take to accomplish stated goals.[7] If a GSE fails to submit an FHFA-approved plan or meet goals under these plans, penalties–yet to be clearly defined–may be imposed.

I. FHFA arbitrarily and capriciously expands and redefines its statutory mission by imposing an "equity" requirement on the GSEs.

The FHFA prefaced its proposed rule by claiming "a number of statutory and regulatory authorities that apply to FHFA and the Enterprises speak to the need to advance equity for homebuyers, homeowners, and tenants in the housing market."[8]

The first "equity" statute cited by the FHFA is 12 U.S.C. 1716(3) and (4) (Fannie Mae charter purposes) and 12 U.S.C. 1451 note (b)(3) and (4) (Freddie Mac charter purposes) which lists the purposes for the establishment of secondary market facilities for residential mortgages for these two GSEs. Verbatim, this lists the following purposes:

> *provide ongoing assistance to the secondary market for residential mortgages (including 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) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; [and] promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and*

[3] 12 U.S.C. 1421 *et seq*.
[4] 12 U.S.C. 4511(b).
[5] 12 U.S.C. 4501.
[6] Proposed Rule, p. 25308 (§1293.22(b)).
[7] Ibid.
[8] Proposed Rule, p. 25294 ("Background").

> *improving the distribution of investment capital available for residential mortgage financing.*[9] [10]

The FHFA also cites three statutes for the GSE affordable housing goals as evidence of a statutory duty for "equity."[11] However, these statutes do not mention any supposed "equity" notion upon which the FHFA's rationale for the present proposed rule relies. **12 U.S.C. 4561(a), 4562, and 4563** mandate the establishment of GSE goals for purchasing mortgages for single-family housing and multifamily special affordable housing. The Director is required to set housing goals in (1) purchase-money mortgages for owner-occupied housing for low-income families, families residing in low-income areas, and very-low income families, (2) refinancing mortgages for low-income families in owner-occupied housing, (3) goals as a percentage of total mortgage purchase, (4) single-family, owner-occupied rental housing units affordable to low-income families, and (5) multifamily special affordable housing.

In setting and adjusting the annual goals, the statute empowers the Director to consider a number of broad criteria, including:

> *(i) national housing needs; (ii) economic, housing, and demographic conditions, including expected market developments; (iii) the performance and effort of the enterprises toward achieving the housing goals . . . in previous years; (iv) the ability of the enterprise to lead the industry in making mortgage credit available; (v) such other reliable mortgage data as may be available; (vi) the size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, . . . relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively; and (vii) the need to maintain the sound financial condition of the enterprises.*

In this comprehensive list, "equity" is noticeably absent.

Lastly, the FHFA references the Duty to Serve Underserved Markets (12 CFR part 1282, subpart C).[12] This duty finds its statutory home under Section 1335 of the Safety and Soundness Act (12 U.S.C. 4565). The duty of each GSE is to "provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages for very low-, low-, and moderate income families" in the following underserved markets: manufactured housing, affordable housing preservation, and rural markets.[13] This includes each GSE taking "affirmative steps" to assist primary lenders in making housing credit available in areas with concentrations of low-income and minority families.[14] The FHFA does have a statutory obligation of providing ongoing liquidity to the secondary market for residential mortgage. This includes purchasing mortgages on housing for low- and moderate-income families with a "reasonable" economic return that may be less than the return earned on other activities. But the subtle introduction of "a need to advance equity for homebuyers, homeowners,

[9] 12 U.S.C. 1716(3) and (4).
[10] 12 U.S.C. 1451 note (b)(3) and (4).
[11] 12 U.S.C. 4561(a), 4562, and 4563.
[12] 12 CFR part 1282, subpart C.
[13] 12 U.S.C. 4565.
[14] 12 U.S.C. 4565(b)(3).

and tenants in the housing market" induces lenders to expand lending not only to those with low and -moderate-income or in traditionally defined underserved communities, but instead to make a concerted effort in deemphasizing credit worthiness.

This is problematic because it exposes both the lender and the borrower to increased risk of a default along with taxpayers who presently backstop trillions of dollars' worth of mortgages purchased by the GSEs. Even Rep. Barney Frank has admitted that ideological pressure for diversity in the housing sector led to lower credit standards, sparking the 2007 financial crash.[15] The FHFA's proposed equitable housing plans will merely add fuel to the fire as non-financial considerations continue to drive lending policy. At its most destructive, the proposed rule threatens to subvert the Agency's very mission and *raison d'etre*– "to ensure that the GSEs provide stability and liquidity to the mortgage market, support affordable housing and operate safely and soundly."

Expanding credit to those with riskier borrowing profiles may make housing even less affordable in the lower-priced housing segment demand increases as a result.[16] That segment of the market has already inflated by 46% in just the past four years. Combined with soaring interest rates, mortgage payments on median-prices homes have skyrocketed from under $1,500 just two years ago to nearly $2,700 today. Of course, affordable housing was never the goal of this proposal, but rather a vague notion of "equity" that the FHFA itself cannot (or refuses to) define. The FHFA--in the words of FHFA Director Sandra L. Thompson—seems intent on pursuing "equitable and sustainable access to homeownership," inventing the goals and definitions along the way.[17] This marks yet another shrewd transformation of "fair housing" certifications into a vehicle for forcing private entities to implement ideological policies outside the legislative process.

GSE mortgage purchase guidelines greatly influence the decisions of other market participants—including developers, lenders, and buyers. At present, GSEs purchase mortgages from private lenders, impacting millions of borrows across tens of thousands of communities in all 50 states. In fact, close to 70% of residential mortgages are ultimately purchased by the GSEs.[18] New FHFA definitions utilized in achieving equitable housing finance plans goals—specifically relating to "barriers" to "sustainable housing" and "underserved communities"—will influence the types of loans GSEs seek to purchase from private banks and other lenders.

Developers, who are typically bound only by local zoning guidelines, will be induced to adjust plans in order to meet preferential loan parameters from lenders seeking to sell the mortgage to a GSE seeking to meet equitable housing finance plan targets. At the same time, lenders and landlords will be induced to adopt more lenient foreclosure and eviction practices than required by local laws, as GSEs seek to purchase loans that will advance the goals of their equitable

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[15] Donovan Slack, "Stance on Fannie and Freddie dogs Frank," The Boston Globe, October 14, 2010, http://archive.boston.com/news/politics/articles/2010/10/14/frank_haunted_by_stance_on_fannie_freddie/.

[16] Christopher Rufo, "'Housing First' Policy Has Failed the Homeless," The Daily Signal, August 26, 2020, https://www.dailysignal.com/2020/08/26/housing-first-policy-has-failed-the-homeless/.

[17] Federal Housing Finance Agency, "FHFA Announces Updates to the Enterprises' Single-Family Pricing Framework," January 19, 2023, https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Updates-to-Enterprises-SF-Pricing-Framework.aspx.

[18] Andreas Fuster, David Lucca, and James Vickery, *Mortgage-Backed Securities*, Federal Reserve Bank of New York Staff Reports, no. 1001, February 2022, Federal Reserve Bank of New York, p. 23, https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr1001.pdf.

housing finance plans. As a result, developers–along with lenders and landlords–will be involuntarily enlisted to achieve housing "equity" rather than meeting actual market needs.

Through this mechanism, FHFA-approved equitable housing finance plans work in conjunction with the Department of Housing and Urban Development's (HUD) "Affirmatively Furthering Fair Housing" regulation (AFFH). [19] [20] Like the AFFH regulation, this proposed rule seeks in part to change local zoning laws--essential to preserving the unique character of America's middle-class suburbs.

The present proposed rule could also open the door to future lawsuits by private parties demanding further FHFA scrutiny and enforcement of the GSE's plans and their attestations. This notably occurred most notably occurred following the 1994 directive by President Clinton to HUD to create a certification regime.[21] The regime called on jurisdictions to analyze and report on local impediments to "fair housing choice," a euphemism for low-income housing.[22]

With that in place, activists sued Westchester County on the novel theory that its impediments analysis was inadequate and therefore a violation of the False Claims Act–even though HUD had accepted it.[23] Under government pressure, the County settled. The activists collected $7.5 million, and their civil rights law firm took an additional $2.5 million.[24][25]

The FHFA and its allies justify this latest overreach with breezy citations to the Fair Housing Act's lofty goals. The Fair Housing Act's sponsors aimed to achieve "truly integrated and balanced living patterns."[26] But the chief sponsor, Senator Mondale, was equally clear that this was a long-term goal to be achieved through the narrow mechanism of eliminating overt housing discrimination, particularly restrictive covenants. Fair housing, he said, means "the elimination of discrimination in the sale or rental of housing. That is all it could possibly mean."[27] "Progressives" may try to broaden this authority, but Mondale's narrower view is persuasive given America's bedrock principles of individual liberty and limited government.

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[19] Proposed Rule, p. 25298.

[20] Under AFFH jurisdictions receiving federal housing funds must obsessively measure diversity and make way for low-income housing units next door to single family homes. It centers on the longstanding statutory requirement for grantees to certify that they will "affirmatively further fair housing." In context, this is merely a promise to use the funds as intended included alongside standard certifications that the grantee will obey applicable civil rights laws.

[21] Executive Order 12892 of January 17, 1994, Federal Register Volume 59, Number 13 (Thursday, January 20, 1994), https://www.govinfo.gov/content/pkg/FR-1994-01-20/html/94-1532.htm.

[22] Affirmatively Furthering Fair Housing, A Rule by the Housing and Urban Development Department on July 16, 2015, https://www.federalregister.gov/documents/2015/07/16/2015-17032/affirmatively-furthering-fair-housing.

[23] *Cnty. of Westchester* v. *HUD*, No. 13-3087 (2d Cir. 2015), https://caselaw.findlaw.com/court/us-2nd-circuit/1692409.html.

[24] Case Profiles: Anti-Discrimination Center v. Westchester County, Relman Colfax PLLC, https://www.relmanlaw.com/cases-westchester.

[25] "The Death of Obama's Slush Funds," *The Wall Street Journal*, June 8, 2017, https://www.wsj.com/articles/the-death-of-obamas-slush-funds-1496878321.

[26] Affirmatively Furthering Fair Housing overview, U.S. Department of Housing and Urban Development, https://www.hud.gov/AFFH#:~:text=In%201968%2C%20when%20Congress%20enacted%20the%20Fair%20Housing,ghettos%20by%20%E2%80%98truly%20integrated%20and%20balanced%20living%20patterns.%E2%80%99%E2%80%9D .

[27] *N.a.a.c.p., Boston Chapter, Plaintiff, Appellant*, v. *Secretary of Housing and Urban Development, et al.,defendants, Appellees*, 817 F.2d 149 (1st Cir. 1987), https://law.justia.com/cases/federal/appellate-courts/F2/817/149/467529/.

Recent history shows that the implications cannot be overstated.

The FHFA's interpretation of its statutory authority requirement in mandating equitable housing finance plans is unlawful, especially in light of the precedent set in *West Virginia v. EPA*. The Agency claims that 42 U.S.C. 3608(d) gives it license to impose new program standards on regulated entities. The statute, however, gives it no such authority. The extent and nature of the Agency's regulation is defined by the statutes that explicitly grant it regulatory authority: the mandate to "administer their programs […] in a manner affirmatively to further" the policies of the Fair Housing Act merely modifies the manner in which the Agency exercises its pre-defined and statutorily authorized regulatory authority.[28]

As discussed, the GSEs are bound to "provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages for very low-, low-, and moderate income families" in manufactured housing, affordable housing preservation, and rural markets.[29] GSEs are also required to take "affirmative steps" to assist primary lenders in making housing credit available in areas with concentrations of low-income and minority families.[30]

Neither of these requirements authorize the FHFA to make GSEs pursue objectives like "reducing disparities in the share of loans acquired by the Enterprise that serve an underserved community" or "reducing disparities in negative outcomes for an underserved community" in a variety of situations.[31] These objectives are clearly not simply "affirmative steps" to assist primary lenders, but new requirements imposed upon them via the GSEs and entirely foreign objectives to those that they have. The GSEs have already been given a statutory objective, namely, to provide for a primary and secondary market where credit and mortgages are available to underserved communities. This objective encompasses a fair market where lenders take steps to ensure that credit is available wherever possible. This objective cannot be replaced with an objective to obtain a certain demographic mix of borrowers or to place a thumb on the scale to ensure that such borrowers have better outcomes.

The FHFA attempts to make the tail wag the dog: it attempts to pretend that the primary objective of the GSEs actually contains or necessitates these proposed objectives (which are, ostensibly, examples of objectives that may be pursued and thus, at the very least, are considered acceptable proposals by the FHFA). This is simply untrue. These objectives are foreign to a lending regime defined by the statutory requirements of the FHFA.

If the FHFA wishes to claim that these objectives are authorized, it must contend with the actual language of the statute in question. 42 USC 3608(d), upon which the Department rests its entire case for the program standards requirement of the rule (since none of the FHFA's statutory sources include these objectives as a legitimate interest of the FHFA) states that:

> "All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having

[28] 42 U.S.C. 3608(d).
[29] 12 U.S.C. 4565.
[30] 12 U.S.C. 4565(b)(3).
[31] 88 FR 25304.

> regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes."[32]

Here, the word "affirmatively" grants no new authority; the word, with the phrase "to further," merely modifies the *manner* in which the Agency administers the programs and activities which it has been authorized to administer by Congress. No agency is directed or authorized to push "further than" these policies, but only directed to "further" *existing* policies towards their existing statutory ends. Likewise, no agency is mandated to create an entirely new system of rules designed to modify in any way the *aims* of these policies.

To claim that this statute authorizes the imposition of these new objectives on GSEs and primary lenders would be, in the words of *West Virginia*, to cite the "modest words," "vague terms," and "subtle devices," of a statute meant as merely "gap filler."[33] In imposing new aims on lenders as a form of "affirmative" assistance to lenders, the FHFA would be embarking on a "transformative expansion" of regulatory authority.[34] The FHFA thus attempts unlawfully to answer a major question which Congress has conspicuously declined to act on, namely, the question of whether equity in outcomes should be pursued as a proxy to equality of opportunity. Such a sweeping regulatory shift would require explicit Congressional authorization; because the FHFA has none (especially considering the testimony of Senator Mondale vehemently to the contrary), it has attempted to regulate in an arbitrary and capricious manner.

II. The proposal arbitrarily and capriciously defines "barriers," "sustainable housing," and "underserved" communities.

A stated premise of the FHFA proposed rule is the notion that "all communities in the United States deserve access to sustainable housing opportunities."[35] Core to the Equitable Housing Finance Plans is the drive to remove "barriers" to sustainable housing in "underserved" communities. The novel definitions of these seemingly innocuous terms shift and expand the mission of the GSEs beyond the statutorily defined purpose. Combined with the vague guidelines for FHFA determination of "insufficient compliance management" with the proposed rule and FHFA enforcement via "corrective action," the FHFA will possess broad powers to the FHFA to arbitrarily reject the equitable housing finance plan because the proposed rule itself does not specify the requisite metrics for meeting the rule requirements and because the proposed definition of "sustainable" housing is so flexible. [36] This is a feature, not a bug, of the proposed rule, as the FHFA boasts that its compliance oversight is intended "to be flexible and tailored."

A. ***Sustainable housing opportunity*** means "a rental or homeownership opportunity that includes one or more characteristics important to the needs of a tenant or

[32] 42 U.S.C. 3608(d).
[33] *West Virginia v. EPA*, No. 20-1530, 5, 23 (U.S. Jun. 30, 2022) (internal quotation marks and brackets omitted).
[34] *West Virginia v. EPA*, 5.
[35] Proposed Rule, p. 25294.
[36] Proposed Rule, p. 25303 (§ 1293.3).

homeowner….[including] providing reasonable opportunities to accommodate hardships by the renter or homeowner to allow continuation of the housing opportunity."[37]

The eviction and foreclosure process serves as a safeguard to protect the private property rights essential to ensuring an ample supply of safe, affordable housing. However, this rule attempts to reshape eviction processes by making it more difficult to obtain a GSE-backed loan without eviction or foreclosure relief provided in the terms of the mortgage or rental agreement.

In the absence of robust eviction enforcement, higher rents and mortgage rates will be required to mitigate the heightened risk from delinquency and defaults. Prospective renters may find themselves subject to increased security deposits and tighter credit checks. Ultimately, fewer affordable housing units may be constructed. The agency has arbitrarily failed to grapple with these important costs.

B. ***Underserved community*** is "a group of people with shared characteristics or an area that is subject to current discrimination or has been subjected to past discrimination that has or has had continuing adverse effects on the group or area's participation in the housing market, historically has received or currently receives a lower share of the benefits of Enterprise programs and activities providing sustainable housing opportunities, or that otherwise has had difficulty accessing these benefits compared with groups of people without the shared characteristic or other areas."

This definition of an "underserved community" encompasses not only those subjected to past discrimination that presently has an adverse effect on their ability to obtain housing. The proposed definition also includes those who are part of a group that ***previously*** was impacted by discrimination. This bears resemblance to proposals to provide reparations for descendants of those who suffered injustices generations ago even if the current generation no longer is financially impacted. This "equitable financing" is NOT solely provided for those currently experiencing the impact of present or prior discrimination. All that is needed is to show "difficulty" compared to other groups, even if this difficulty is related to other factors. [38] Directing benefits towards an individual to mitigate the impact of unlawful discrimination regardless of whether an individually has been personally harmed by such discrimination is problematic because it discriminatorily favors one class over another and stokes societal strife.

The proposed rule makes it abundantly clear that its "underserved communities" encompasses far more than those protected by the Consumer Credit Protection Act and the Fair Housing Act. Specifically, the rule includes "*individuals with limited mainstream credit and banking history"* as one such community. This is problematic because if someone with subpar credit—or no credit history—is an "underserved community" and the proposed rule requires a more equal access to credit and housing options relative to other communities, then GSEs will prioritize mortgage purchases from banks and investors promising to loosen underwriting standards in a

[37] Proposed Rule, p. 25307 (§1293.2).

[38] Proposed Rule, p. 25294: "generally encompasses a group of people with shared characteristics or an area that is subject to past discrimination that has or has had continuing adverse effects on the group or area's participation in the housing market, historically has received or currently receives a lower share of the benefits of Enterprise programs and activities providing sustainable housing opportunities, or that otherwise has had difficulty accessing these benefits compared with groups of people without the shared characteristic or other areas."

manner conducive to expanding credit to those of higher risk. Of course, low credit scores are oftentimes due to unfortunate circumstances, rather than poor choices. Thankfully, we live in a nation where individuals can rebuild their credit, whether those rough stretches were due to their own mistakes or the misfortunate that can beset anyone through no fault of their own. Even for those just two years out of bankruptcy, high loan-to-value mortgages are available. The proposal arbitrarily fails to address this important adverse side effect.

C. ***Barrier*** means "an element of an Enterprise's actions, products, or policies, or an aspect of the housing market that can reasonably be influenced by the Enterprise's actions, products, or policies, that contributes to an underserved community's limited share of sustainable housing opportunities, difficulties in accessing those sustainable housing opportunities, or the continuing adverse effects of discrimination affecting their participation in the housing market."

In its explanation of the program standards for the equitable housing finance plans, FHFA lists a series of example "objectives" the GSEs may take in relation to removing barriers. This includes the following:

- Increasing accesses to "sustainable housing" by "expanding the number of qualified borrowers of an underserved community."
- "[M]aking changes to underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures."
- "Reducing disparities in negative outcomes for an underserved community in tenant screening, repayment options, and evictions;"
- For landlords in GSE-financed properties, "[P]rohibiting source of income discrimination (including rental subsidies and vouchers), providing other tenant protections, or requiring reporting of on-time payments."
- Increasing the supply of, and equitable access to, high-quality affordable rental housing for an underserved community.
- Reducing disparities in acceptance rates for underserved communities.[39]

Because "individuals with limited mainstream credit and banking history" are considered to be an "underserved community," many of these examples of removing barriers to housing finance or rental options involve extending credit or housing to those with subpar financial histories—all in the name of equity.

In totality, the definition of "sustainable housing" in conjunction with eliminating "barriers" for "underserved communities" mirrors the recent decision by the FHFA to hike the loan-level pricing adjustment fee on homebuyers with high credit scores and redistribute those funds to borrowers with low credit scores.[40] The overall impact of the scheme is to increase the cost of

[39] Poor credit borrowers are considered to be an "underserved" community.

[40] Under the new loan-level pricing adjustment matrix, a borrower with a 740 FICO score and a down payment of just under 20% will pay a 1% loan-level pricing adjustment fee. That's quadruple the prior risk assessment of 0.25%. At the same time, the loan-level pricing adjustment fee for many borrowers with bad credit will be slashed

credit and housing for those with good credit and lower the cost of credit for those with bad credit.

Expanding access to those who do not presently qualify will not resolve the housing crisis—and in fact will risk harming the intended beneficiaries.

As Ed Pinto and Tobias Peter recently warned:

> *"The last great credit expansion, done with the goal of expanding homeownership in the runup to the 2008 crisis, left some 14 million borrowers, many of them minorities, seriously behind on their mortgages as home prices crashed by more than 25%. Rather than equipping borrowers with more financial reserves and allowing them to build equity to withstand a decline in home prices,* ***progressives are now trying to eliminate the risk of foreclosure altogether.*** *Remove that threat and—at least in theory—everyone can afford a mortgage. Some argue that since borrowers would no longer default, we could safely expand credit."*[41]

If politicians truly wanted to expand credit access for a greater portion of the population, the focus would be on teaching consumer finance skills to high schoolers and college students to equip everyone with the knowledge to accumulate wealth and attain credit.[42]And if politicians truly wanted to address the housing affordability bubble, they would stop funneling trillions of dollars to the housing market through subsidies, government-guaranteed mortgages, and Federal Reserve mortgage-backed securities purchases—policies that have created the most unaffordable housing in history. Local governments bear responsibility too for their role in suppressing supply of new housing which drives up costs.

This proposed rule—ostensibly to expand homeownership—threatens to repeat the mistakes that led to the housing market meltdown in 2006-2008.

Policy makers should instead focus on the root causes of the disparity between demographic groups on access to credit, savings, and income rather than on attempting to equalize financing and housing access regardless of credit worthiness.

Sincerely,

Joel Griffith

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by half or more. Loan-Level Price Adjustment Matrix, Fannie Mae, May 17, 2023, https://singlefamily.fanniemae.com/media/9391/display.

[41] Ed Pinto and Tobias Peter, "Biden Courts Another Mortgage Crisis," *The Wall Street Journal*, May 22, 2023, https://www.wsj.com/articles/biden-courts-another-mortgage-crisis-federal-housing-finance-agency-mortgage-loans-risk-2008-homeownership-fe752269?mod=hp_opin_pos_3#cxrecs_s.

[42] Ed Pinto: "there are far-reaching shortcomings in educational outcomes, marital status and earnings that need to be addressed. These socioeconomic factors explain most of the gap in homeownership between black and white Americans." https://www.wsj.com/articles/biden-courts-another-mortgage-crisis-federal-housing-finance-agency-mortgage-loans-risk-2008-homeownership-fe752269?mod=hp_opin_pos_3#cxrecs_s.