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On Banking, Housing, and Urban Affairs

Chairman's Housing Reform Outline, Part 2
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Good morning Chairman Crapo, Ranking Member Brown, and Members of the Senate Banking Committee. Thank you for the opportunity to testify regarding our nation's housing finance system, an issue that profoundly affects American families and is also critical to the overall housing industry, which is nearly 20 percent of the United States economy. I am the President of the Center for Responsible Lending (CRL), a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, a community development lender headquartered in Durham, NC. Since 1980, Self-Help has provided over $7 billion in financing to 131,000 families, individuals and businesses under-served by traditional financial institutions. It helps drive economic development and strengthen communities by financing hundreds of homebuyers each year, as well as nonprofits, child care centers, community health facilities, public charter schools, and residential and commercial real estate projects. Through its credit union network, Self-Help's two credit unions serve over 130,000 people in North Carolina, California, Illinois, Florida, and Wisconsin and offers a full range of financial products and services. Learn more at www.self-help.org and www.self-helpfcu.org.

Our Housing Finance System and the GSEs provide essential services to families and lenders across the country. Rural borrowers, small lenders and lower wealth borrowers particularly benefit from these services because the GSEs provide access to a national market, making home loans more affordable overall. The GSEs, though, had critical flaws leading up to the crisis. Since then, fundamental reforms have been made to them, and these changes have addressed systemic risks. Going forward that work needs to be continued and expanded through regulation like that of the utility industry, to ensure that the housing finance system fully carries out its public mission but does not expand beyond that role. Proposals to replace the housing finance system with a dramatically new model would unnecessarily undercut the system's public mission and place our overall housing market in grave danger of harmful and costly disruption. Finally, there is a growing affordable housing crisis for potential homeowners and renters across the country. To provide decent housing opportunities for American families, the existing GSEs' duty to serve the full market and their affordable housing programs and requirements must be preserved, and significant additional efforts must be undertaken to expand lending to more credit worthy families.

Today's testimony draws extensively from our September 6, 2018 remarks delivered to the United States House of Representatives Committee on Financial Services.[1]

[1] A Failure to Act: How a Decade without GSE Reform Has Once Again Put Taxpayers at Risk, United States House of Representatives Committee on Financial Services, 115th, Cong. (2008) (Testimony of Nikitra Bailey), available at https://financialservices.house.gov/uploadedfiles/09.06.2018_nikitra_bailey_testimony.pdf.

I. The Federal Housing Finance System and The Government Sponsored Enterprises Provide Essential Services to Families and Lenders

The United States' federal housing finance system, including the Government Sponsored Enterprises (GSEs), have made stable and affordable mortgage credit available across the country and throughout economic downtowns. In May 2018, outstanding securities in the agency market totaled $6.47 trillion and were 43.6 percent Fannie Mae, 27.4 percent Freddie Mac, and 29.1 percent Ginnie Mae.[2] Congress created the GSEs in the 1930s to provide stability to the capital markets and to increase the availability of mortgage credit throughout the country following periods of severe economic volatility. The GSEs are required to serve all credit markets at all times, which ensures broad credit availability in every region of the nation. The charters of the GSEs state that they must "promote access to mortgage credit throughout the nation (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."[3] By bundling and securitizing mortgages with an implied federal government guarantee, the GSEs have increased the flow of credit to all parts of the nation. We now have a national mortgage market, investor confidence, increased loan volume, and widespread use of the 30-year fixed rate mortgage. This, in turn, has resulted in more affordable loans for consumers. Although the GSEs experienced major losses from the housing crisis, they also played a market stabilizing role while private capital withdrew.

A. The GSEs Provide Important Mortgage Credit to Rural Borrowers, Underserved Families and Community Banks

The GSEs continue to provide critical mortgage capital to underserved communities. The GSEs purchased nearly two million home purchase and refinance mortgage loans in 2017 or 32.6 percent of loans originated in 2017, including almost half a million loans to low- and moderate-income borrowers, over 600,000 loans to borrowers of color and over 300,000 loans to borrowers living in rural areas (Figure 1)**.** A report from 2018 using 2016 data also found that smaller financial institutions (those with assets less than $10 billion) originated and sold loans to the GSEs in order to meet the credit needs of nearly 400,000 borrowers seeking mortgage credit in rural communities, relying on the GSEs for critical capital.[4] Loans backed by Ginnie Mae also continue to play a significant role in serving borrowers whose credit may warrant additional enhancement or who have limited resources for a down payment. However, FHA lending cannot and should not be the sole source of mortgage lending in these communities.

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[2] Laurie Goodman *et. al*., Housing Finance at a Glance: A Monthly Chartbook, Urban Institute (June 2018), at 6-7, available at https://www.urban.org/sites/default/files/publication/98669/housing_finance_at_a_glance_a_monthly_chartbook_june_2018_0.pdf.

[3] Fannie Mae's charter is in Title III of the National Housing Act, 12 U.S. Code § 1716 *et. seq*. Freddie Mac's charter is in 12 U.S.C. §1451 *et. seq*.

[4] Michael Calhoun, Tom Feltner, and Peter Smith, Supporting Mortgage Lending in Rural Communities, Brookings Institution, (January 2018), available at https://www.brookings.edu/wpcontent/uploads/2018/01/es_2018_01_10_rural_housing_report.pdf.

Figure 1. 2017 purchase and refinance loans by purchaser

	All loans		Loans to LMI borrowers		Loans to borrowers of color	
	#	%	#	%	#	%
GSEs	1,916,709	32.6	470,828	31.3	631,360	31.8
Ginnie Mae	949,567	16.1	258,014	17.2	384,611	19.3
Not sold in 2017	1,200,375	20.4	261,836	17.4	388,313	19.5
Other	1,820,703	30.9	512,979	34.1	583,188	29.3
Total	**5,887,354**		**1,503,657**		**1,987,472**	

Source: CRL analysis of 2017 Home Mortgage Disclosure Act data, home purchase and refinance mortgages for first-lien, owner-occupied, 1-4 family homes, including manufactured homes. GSEs refers to all loans sold to Fannie Mae, Freddie Mac or Farmer Mac in 2017 calendar year. Other category includes loans acquired by an affiliate institution, commercial bank, savings bank, savings association, life insurance company, credit union, mortgage bank, finance company or private securitization.

1. The GSEs Provide Important Credit Access for Low- and Moderate-Income Borrowers and Borrowers of Color

In 2017, GSEs purchased 470,828 purchase and refinance loans made to low- and moderate-income (LMI) borrowers, making up 31.3 percent of purchase and refinance mortgage lending to LMI borrowers, or borrowers with incomes less than 80 percent of the area median income (Figure 1). During the same year, the GSEs purchased 631,360 loans to borrowers of color, or 31.8 percent of all loans to these borrowers.

2. The GSEs Provide Important Credit Access in Rural Communities

While conventional financing and the GSEs remain a critical component of the mortgage market in low- and moderate-income communities of color, the GSEs also provide an important source of mortgage capital in rural communities.[5] According to research by CRL and released by Brookings Institution, the GSEs purchased nearly one out of every three new mortgages in rural communities in 2016. In 2016, lenders made over 1.2 million purchase and refinance loans in rural areas.[6] The GSEs also purchased 80,680 purchase and refinance loans to LMI borrowers in rural areas and 24,132 loans to rural borrowers of color, a 26.7 percent and 21.9 percent market share, respectively (Figure 2).

[5] *Id*.

[6] Census tracts, which were classified as either urban or rural areas based on the 2017 definition of rural area at 12 CFR 1282.1, and available at https://www.fhfa.gov/DataTools/Downloads/Pages/Duty-to-Serve-Data.aspx.

Figure 2. 2016 purchase and refinance loans by purchaser in rural areas

	All loans		All rural loans		Loans to rural LMI borrowers		Loans to rural borrowers of color	
	#	%	#	%	#	%	#	%
GSEs	**2,427,505**	**35.2**	**364,719**	**30.3**	**80,680**	**26.7**	**24,132**	**21.9**
Ginnie Mae	1,191,979	17.3	244,573	20.3	59,455	19.7	30,308	27.6
Not sold in 2016 CY	1,346,756	19.5	283,722	23.5	74,531	24.7	24,926	22.7
Other	1,932,929	28.0	311,900	25.9	87,058	28.8	30,643	27.9
Total	**6,899,169**		**1,204,914**		**301,724**		**110,009**	

Source: Center for Responsible Lending analysis of 2016 HMDA data

Figure 3. 2016 purchase and refinance loans originated by small lenders by purchaser in rural areas

	Purchase		Refinance		Total	
	#	%	#	%	#	%
GSEs	50,334	24.6	49,817	29.6	100,151	26.8
Ginnie Mae	7,450	3.6	1,669	1.0	9,119	2.4
Not sold in 2016 CY	78,691	38.4	79,975	47.4	158,666	42.5
Other	68,252	33.3	37,123	22.0	105,375	28.2
Total	**204,727**		**168,584**		**373,311**	

Source: CRL analysis of 2016 Home Mortgage Disclosure Act data

B. The Federal Housing Finance System Must Address Its Role in Fostering Racial Discrimination in the Mortgage Market and The Resulting Racial Wealth Gap

Federal housing policies created in the twentieth century in response to the Great Depression explicitly discriminated against African-American, Latino, and other families of color by denying them access to federally-insured mortgage programs because of their race. These policies are a significant factor in why white families today have higher rates of homeownership and greater family wealth than families of color. These federal programs helped white families, mostly former immigrant families with European backgrounds, enter homeownership and build a solid foundation to help establish the American middle class. Policies underlying these programs, such as denial of credit for borrowers buying in predominantly African-American neighborhoods, granted whites the ability to build wealth through homeownership while denying equal opportunities for families of color to build similar home equity over the same period. As a result, whites amassed an economic advantage over families of color that has been passed on to future generations through intergenerational wealth transfers. Today, disparities in homeownership are a key contributor to the ongoing racial wealth gap and home equity still plays a central role in shaping family wealth for the middle class.

These discriminatory policies were enshrined in the housing finance system starting in 1933 with the underwriting guidelines of the Home Owners Loan Corporation (HOLC) and allowed redlining of African-American and other communities of color, denying them access to mainstream banking services.[7] Specific examples of the impact of this inequity include the reality that only 2% of FHA insured mortgage loans went to homebuyers of color during the first 35 years of the program due to redlining.[8] Further, the administration of the GI Bill loan programs enacted by Congress in 1944 continued this discrimination.[9] In the state of Mississippi alone, just 2 out of 3,229 VA insured mortgages went to African-Americans servicemembers seeking to finance a home or business in the first three years of the program.[10]

According to a report by Demos, if homeownership rates were the same for whites and people of color, we would see a decrease in the racial wealth gap by 31 percent for African-Americans and 28 percent for Latinos.[11] The current federal housing finance system was created with discriminatory federal housing policies as the foundation. Now it must offer an equitable solution forward.

C. The GSEs' Duty-to-Serve Mandate Ensures More Equitable Pricing

The GSEs and FHA today have an affirmative statutory duty to serve all markets, which incentivizes them to set prices in a way that balances risk and access.[12] They are incentivized to spread risk and price credit risk on a pooled basis.

The total amount borrowers pay to cover credit risk is a function of modeled losses, capital standards and the required rate of return on capital.[13] Modeled losses are largely independent of system

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[7] For a more robust discussion of how federal housing policies benefitted whites while disadvantaging African Americans and other people of color, see Ta-Nehisi Coates, The Case for Reparations, The Atlantic, June 2014, available at http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/; Bob Herbert, Against All Odds: The Fight for the Black Middle Class, Bob Herbert and Public Square Media, Inc (2016), available at http://www.pbs.org/wnet/chasing-the-dream/films/against-all-odds/; James Carr and Nandinee Kutty, Segregation: The Rise Costs for America, Routledge (2008); Ira Katznelson, When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America, W. W. Norton & Company (2005); Thomas M. Shapiro, The Hidden Cost of Being African American: How Wealth Perpetuates Inequality, Oxford University Press (2004); Melvin L. Oliver and Thomas M. Shapiro, Black Wealth/White Wealth: A New Perspective on Racial Inequality, Routledge (1997).

[8] Dedrick Asante-Muhammad, *et. al.*, The Road to Zero Wealth: How the Racial Wealth Divide is Hallowing Out America's Middle Class; at 15 (September 2017), available at https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.

[9] *Id*. at 16.

[10] *Id*.

[11] Tanvi Misra, Why America's Racial Wealth Gap is Really a Homeownership Gap, Demos, March 12, 2015, available at http://www.demos.org/news/why-americas-racial-wealth-gap-really-homeownership-gap.

[12] CRL continues to work with FHFA to encourage changes which could further open up access to credit. For example, eliminating the loan level price adjustments (LLPAs) that were put in place after the crisis.

[13] For a more detailed discussion of the levers that affect pricing and the distribution of pricing for credit risk see Calhoun, M. and Wolff, S. Who Will Receive Home Loans, and How Much Will They Pay?, 2016, available at http://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-finance-reformincubator/mike-calhoun-and-sarah-wolff-who-will-receive-home-loans-and-how-much-will-they-pay.

structures.[14] Capital requirements and required rates of return on capital are dependent on the structure of a future system, and function to increase or decrease the overall total amount to be held to guard against losses.

Participants in the housing finance system set policies that translate predicted credit losses into pricing for home loans and in many cases, distribute different prices for borrowers with different characteristics. Importantly, the degree to which costs are pooled or distributed is determined by the structure of the housing finance system. For example, FHA charges the same insurance premium to borrowers regardless of credit score,[15] whereas private mortgage insurers charge widely different fees to borrowers with different credit scores and/or levels of down payment.

The GSEs currently set prices based on a more consolidated set of borrower characteristics than private actors like private mortgage insurers. They cover credit risk largely through back-end credit risk transfer mechanisms that allow for the pooling of loans and risk. Ultimately, these policies limit the degree to which loan pricing is highly segmented. Preserving these features will result in less differential pricing and make it more likely that creditworthy families of modest means can afford a mortgage.

D. Following the Financial Crash, GSE and FHA Lending Saved the Market from Complete Shutdown

The GSEs and FHA sustained the market following the housing crash, while private capital withdrew.[16] The countercyclical nature of the GSEs and FHA insured mortgage credit sustained the market during this time. Private label lending peaked in 2006 with approximately 40 percent of all mortgage originations.[17] It began to decline in 2007 and virtually stopped by 2008.[18] With record levels of defaults and foreclosures occurring alongside sharp declining prices nationwide, overall mortgage lending quickly dried up.

Credit would not have been available for most mortgagees if not for government support during the financial crisis. Backed by government guarantees, the GSEs, under FHFA conservatorship beginning in September 2008, and FHA continued to ensure the availability of credit. GSE lending jumped to over 65

[14] System structure could introduce new risks. For example, if a future system made it very difficult or costly for first-time homebuyers to purchase a home, then existing homeowners would have a difficult time selling their homes. This could depress housing prices or limit liquidity in the housing system overall, which could result in a downturn and create losses in the system above what would be predicted by current models.
[15] FHA premium rates available at https://portal.hud.gov/hudportal/documents/huddoc?id=17-07ml.pdf.
[16] The Financial Crisis Inquiry Commission, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, at 105 (January 2011) (stating that "[s]imultaneously, underwriting standards for nonprime and prime mortgages weakened. Combined loan-to-value ratios—reflecting first, second, and even third mortgages—rose. Debt-to-income ratios climbed, as did loans made for non-owner occupied properties. Fannie Mae and Freddie Mac's market share shrank from 57 percent of all mortgages purchased in 2003 to 42 percent in 2004, and down to 37 percent by 2006. Taking their place were private-label securitizations—meaning those not issued and guaranteed by the GSEs."), available at http://fcicstatic.law.stanford.edu/cdn_media/fcicreports/fcic_final_report_full.pdf.
[17] Laurie Goodman *et.al.*, Housing Finance at a Glance: A Monthly Chartbook, at 8 (May 2017), available at http://edit.urban.org/sites/default/files/publication/90451/may_chartbook.pdf.
[18] *Id*.

percent of all mortgage originations in 2008.[19] FHA lending also played a key role as its involvement increased rapidly.[20] Since then, FHA purchase loans have dropped steadily and returned closer to the normal levels of the early 2000s.[21] Moody's estimated that FHA's contribution prevented a second collapse in the housing market, which could have sent the U.S. economy into a double-dip recession and caused the economy to shed another three million jobs and the unemployment rate to rise an additional 1.6 percent.[22]

II. Utility Regulation Ensures That the Housing Finance System Fully Carries Out Its Public Mission

The GSEs had critical systemic risk flaws leading up to the crisis. Fortunately, reform under the Housing and Economic Recovery Act of 2008 (HERA), and substantial steps taken by FHFA during conservatorship have greatly reduced these risks. This reform needs to be continued and built upon to ensure the housing finance system fully carries out its public mission and does so in a manner that does not unnecessarily or unfairly compete with private market parties. Utility-type regulation of the GSEs would implement these goals, and there is broad support for this approach.

The GSEs had critical flaws leading up to the crisis that amplified their risks. The three primary ones were: chasing the market by buying unsustainable loans; holding loans in portfolio rather than securitizing the loans into the secondary market in order to increase profits; and, not holding enough capital to cover their risk in the event of a systemic market catastrophe. All three flaws have been addressed by the substantial reform that occurred in HERA and under conservatorship.

On loan quality, the GSEs have since 2008 purchased only fully documented, well-underwritten loans, and these loans are performing exceptionally well.[23] For the overall mortgage market, the CFPB Ability to Repay/Qualified Mortgage Rule has dramatically improved the sustainability of individual mortgage

[19] *Id*.

[20] John Griffith, The Federal Housing Administration Saved the Housing Market (Washington: Center for American Progress, 2012), available at https://www.americanprogress. org/issues/housing/report/2012/10/11/40824/thefederalhousing-administration-saved-the-housing-market/. This report cites data estimates from Moody's Analytics in October 2010.

[21] U.S. Department of Housing and Urban Development, Annual Report to Congress Regarding the Financial Status of the FHA Mutual Mortgage Insurance Fund Fiscal Year 2010, at 2 (November 2010), available at https://portal.hud.gov/hudportal/documents/huddoc?id=report_to_congress.pdf; *See also* U.S. Department of Housing and Urban Development, Federal Housing Administration Annual Report to Congress, The Financial Status Of the FHA Mutual Mortgage Insurance Fund Fiscal Year 2016, at 8 (November 2016), available at https://portal.hud.gov/hudportal/documents/huddoc?id=2016fhaannualreport1.pdf.

[22] John Griffith, The Federal Housing Administration Saved the Housing Market (Washington: Center for American Progress, 2012), available at https://www.americanprogress. org/issues/housing/report/2012/10/11/40824/the-federalhousing-administration-saved-the-housing-market/. This report cites data estimates from Moody's Analytics in October 2010.

[23] Laurie Goodman, *et al.*, Housing Finance at a Glance: A Monthly Chartbook, Urban Institute, at 29 (June 2018), available at https://www.urban.org/sites/default/files/publication/98669/housing_finance_at_a_glance_a_monthly_chartbook_june_2018_0.pdf ("Overall, there has been a marked long term decline in serious delinquency rates as the legacy portfolio is resolved and the pristine, post-2009 book of business exhibits very low default rates. As of April 2018, 1.09% of the Fannie portfolio and 0.94 of the Freddie portfolio were seriously delinquent.")

loans and the safety of the mortgage market, making the risk of a repeat housing crisis far more remote.[24] Leading up to the crisis, the private label security market drastically shifted to loans that did not fully amortize and for which income was not documented--so-called stated income or no-doc loans. These features enabled borrowers to qualify for loans that far exceeded their capacity to repay. These lenders initially offered interest-only loans, under which the borrower only paid the accruing interest and none towards principle. Then lenders added teaser interest rates, with low temporary payments that then jumped up considerably. Borrowers were qualified just on the initial payment amount. This race to the bottom continued with negative amortizing loans which had payments that did not even cover the accruing interest, resulting in a rapidly growing principle balance. Finally, lenders dispensed with the requirement for any documentation of income. All of these moves unsustainably increased the number of loans extended to borrowers, inflating housing prices. However, the model continued only as long as there were large housing price increases that enabled borrowers to refinance the loans before they were required to make fully amortizing payments.

Initially, the GSEs resisted these loans, but they saw their market share drop precipitously. They ultimately purchased no-doc loans made to higher credit borrowers (alt-A loans).[25] While these alt-A loans only comprised a small part of their business (11%) and the GSEs had far lower losses than the private label security market, these alt-A loans produced nearly half of the GSEs' total losses.[26] FHFA's current and ongoing requirements of strong loan underwriting fundamentally reduce the amount of risk of the GSEs. CFPB's ATR/QM rule similarly results in a far safer overall mortgage market.[27]

For the portfolios, the GSEs are now prohibited from holding loans other than for limited business reasons, such as pooling loans for securitization and modifying distressed loans. Leading up to the crisis, the GSEs held large volumes of loans to capture the revenue produced by the difference between the interest earned on the mortgages and their cost of borrowing, which was low due to their implicit government backing. This prohibition on excessive loan portfolios has resulted in a $1.5 trillion dollar reduction in the GSEs' loan portfolios.[28] In addition, the GSEs now are required by FHFA to further reduce their risk by transferring much of the credit risk on the loans they securitize and guarantee. They have done this by entering into Credit Risk Transfer (or CRT) agreements with market guarantors to transfer a portion of the credit risk, and particularly the risk of a catastrophic scenario that would most stress the GSEs. These reforms, along with the robust loan underwriting requirements, leave the GSEs with far less credit risk than they held prior to the crisis.

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[24] The CFPB's QM rule also created an exemption from the 43% DTI cap for mortgages eligible for purchase by Fannie Mae or Freddie Mac.

[25] The GSEs also purchased the AAA tranche of some subprime securities.

[26] John Griffith, 7 Things You Need to Know About Fannie Mae and Freddie Mac, Center for American Progress (Sept. 6, 2012), available at https://www.americanprogress.org/wp-content/uploads/2012/09/GriffithFannieFreddieBrief.pdf.

[27] *See* Michael Calhoun, Lessons from the Financial Crisis: The Central Importance of a Sustainable, Affordable and Inclusive Housing Market, Brookings Institute (Sept. 5, 2018), available at https://www.brookings.edu/research/lessons-from-the-financial-crisis-the-central-importance-of-a-sustainable-affordable-and-inclusive-housing-market/#footref-24 (stating "studies repeatedly show that loans meeting QM standards performed far better in the crisis, reducing losses by half or more.")

[28] Marc Morial, Michael Molesky, and Mike Calhoun, Senate GSE Proposal: A Blow to Affordable Housing and Harmful to the Overall Housing Market, National Urban League and Center for Responsible Lending (March 2018), at 10, available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-nul-senate-gse-reform-proposal_march2018.pdf.

Finally, on capital, HERA requires that FHFA ensure that the GSEs hold adequate capital and gives it the authority to enforce this standard on the GSEs. Under HERA, the GSEs have priced and collected guarantee fees based on a model that secures enough funds to pay for a repeat of the 2008 crisis, and more. Currently, those funds are swept each quarter by the Treasury, but if retained by the GSEs they will fully protect taxpayers. Most recently, FHFA proposed for public comment an updated rule for GSE capital requirements that is significantly likely to unnecessarily lead to dramatic increases in mortgage prices for borrowers.[29] It proposes capital requirements far more than are required to cover a repeat of the 2008 crisis. It assigns risk-based capital based on a stress scenario more extreme than the 2008 crisis without considering the amount of premium flow over the stress. It then adds an additional substantial "going concern" buffer to make sure that the GSEs would have working capital after a crisis so they could continue to operate and serve the market. These higher amounts of capital imply a substantial increase in premium fees. If premium flow is included in setting the amount of capital necessary to cover the anticipated losses in a crisis, it dramatically reduces the necessary amount of capital and, in term, significantly reduces the amount of G-fees that borrowers would be required to pay. If FHFA does not adjust its risk-based capital requirements to account for the benefit of stress flow premium, then borrowers will be paying twice as much as they should to maintain the GSE system and protect taxpayers.

These systemic risk reforms make the GSEs fundamentally different, and safer, than they were prior to the financial crisis, and there is broad consensus that they should be continued. Moreover, there is also broad support for utility-type regulation of the GSEs to ensure they carry out their public mission but do not unfairly expand into areas that unnecessarily compete with the private market. Proceeding in this manner would fully carryout the GSEs' critical mission while ring-fencing their operations to prevent unnecessary expansion and protecting taxpayers. This can be done legislatively or administratively, or through a combination of the two.

The GSEs perform essential public services, and their charters and government backing are needed to make the 30-year fixed rate mortgage widely available to qualified borrowers. However, it is important that the GSEs do not use these tools to inappropriately expand beyond this secondary market function and interfere or unfairly compete with the private sector, especially in the primary mortgage market. Such expansion, though, can be lucrative for the GSEs. Utility-type regulation ensures both that the GSEs fully meet their public mission and that they do not use their status inappropriately.

The GSEs' charters and HERA set out explicitly the public mission of the GSEs to provide broad access to affordable mortgages (see discussion in section I above). Utility regulation appropriately focuses the GSEs' activities on safely meeting this mission and prevents incentives to maximize revenues by serving the most lucrative borrowers and lenders or take unnecessary risks. This also prevents unfair competition with private market companies. HERA and FHFA actions under conservatorship embody much of this type of regulation. It should be continued and expanded upon.

First, FHFA sets out detailed capital standards, both overall standards and detailed standards tied to individual loan characteristics. Since the cost of capital to cover a catastrophic scenario is by far the largest portion of the G fee charged to borrowers, these capital rules determine how the cost of another systemic market failure is allocated and profoundly affect the fees paid by individual borrowers. This

[29] Notice of Proposed Rulemaking, Enterprise Capital Requirements, 82 Fed. Reg. 33312 (July 17, 2018), available at https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Enterprise-Capital-Requirements.aspx.

regulatory authority must be used to ensure adequate capital and that the cost of that capital is equitably borne among different groups of borrowers. In addition, providing investors with more stable, but lower utility rates of return inures to benefit of all borrowers by significantly reducing the cost of providing the necessary capital protection. Lower wealth borrowers are particularly benefited, as they generally bear the largest portion of the capital cost. Such oversight also further ensures that the GSEs are not chasing additional revenue through unwarranted risk or activities. This should be expanded to include a review of products, servicing, and pricing. HERA currently provides for initial review of new products.[30] This review should be expanded to include other activities and to make the authority for review apply on a continuing basis.

Other utility-type regulations could be implemented to reinforce the focus on the GSEs' public mission. Specific board seats could be designated for key affected groups, such as small lenders, home builders, affordable housing providers, and taxpayers. Additional transparency in the operations, data and records of the GSEs can be provided. Limits on political activity, imposed during conservatorship, could be continued.

There is ample authority under HERA and the existing Treasury and FHFA agreements to carry out these reforms, and they could also be included in any legislation. A primary reform of HERA was to create FHFA as a robust regulator of the GSEs. It has wide-ranging powers under its ongoing authority and truly extraordinary authority in its conservatorship role. In addition, the Treasury provides an essential line of credit to the GSEs, and the continuation of this credit could be conditioned on these requirements. This broad contract authority was used to establish the initial PSA agreements with the GSEs. The government also has warrants for just under 80% of the GSEs' stock, and this gives it another powerful lever.

Finally, there is broad support from a wide variety of stakeholders for continuation and expansion of this utility regulation. The Independent Community Bankers Association has called for utility regulation of the GSEs. The National Association of Realtors recently released a white paper supporting utility regulation. The Mortgage Bankers Association called for utility regulation in its blueprint.[31] Along with the Center for Responsible Lending, a broad array of civil rights groups has supported this approach. As noted by the U.S Mortgage Insurers: "many of the leading legislative and Administrative proposals for GSE reform have leaned on some utility-like secondary market function."[32] This broad support reflects the strength of this model to ensure that the public mission of the housing finance system is met but is done so safely and without interfering with the private market. This diverse support also makes this approach a viable pathway to achieving housing finance reform.

[30] 12 U.S.C. § 4541.

[31] Mortgage Bankers Association, GSE Reform: Creating a Sustainable, More Vibrant Secondary Mortgage Market, (April 2017), available at https://www.mba.org/Documents/Policy/17305_MBA_GSE_Reform_Paper.pdf (applied to multi-guarantor model; "[T]he GSEs today, operating in conservatorship and subject to strict regulation, are in a state that is already closer to our recommended utility-model end state, relative to the pre-crisis GSE system that required dramatic federal intervention in 2008").

[32] U.S. Mortgage Insurers, Areas of Alignment for Administrative Reform (October 2018), available at http://www.usmi.org/wp-content/uploads/2018/10/White-Paper_Areas-of-Alignment-for-Administrative-Reform-1.pdf.

III. A New Multi-Guarantor Model Would Undercut the Public Interest Mission and Create Incentives to Exclude Key Groups of Borrowers and Lenders

Several proposals would create a new system with multiple government-backed guarantors. The current system imposes enforceable requirements on the GSEs to promote broad access and affordable housing. These include the broad duty-to-serve mandate found in the GSEs' charters, the statutory affordable housing goals, duty to serve underserved markets, equitable assessment of guarantee fees, and strong regulatory oversight. A multi-guarantor system would eliminate or transform the current GSEs and their charters, without establishing a similar broad duty to serve on the new market participants. The new guarantors would have little oversight over whether they use the guarantee to further the public interest and make responsible homeownership and affordable rental housing accessible to the full market. Most important, the strong incentives for multi-guarantors to maximize revenue would invariably lead to targeting the most lucrative housing markets and the largest, most profitable lenders.

A. A Multi-Guarantor Structure Would End Equitable Pricing for Small Lenders, Rural Borrowers, Lower Wealth Households and Borrowers of Color

The GSEs today have a statutory affirmative duty to serve all markets, which incentivizes them to set prices in a way that balances risk and access. Thus, the GSEs generally pool risk and price credit risk on a less extreme basis. A system with multiple guarantors and little regulatory oversight would no longer be required or incentivized to pool risk. Rather, guarantors would be incentivized to chase the most lucrative markets and serve only particular regions or borrowers. This could have disastrous consequences for borrower access to credit as well as the ability of small lenders to compete on equal footing with large banks.

Furthermore, a multi-guarantor model poses fair lending risk. The system would provide for little regulatory oversight or enforcement of equitable access and fair lending. Proposals endorsing a multi-guarantor model have typically relied on the "business judgment rule." Past business judgment provisions have prohibited the regulator from interfering with the business judgment of the guarantor in deciding which mortgage loans to guarantee. This provides the guarantor with unbridled discretion and no regulatory check. As a result, the multiple guarantors would be strongly incentivized to "cream" the market, serving the wealthiest housing markets and borrowers, and avoiding places like more dispersed rural markets and borrowers of modest means in many regions across the nation. This would have a disproportionate impact on low- to moderate-income borrowers and on communities of color. Because of the business judgment rule, federal supervisors and borrowers would have no recourse to challenge such limits to access.

The model's proponents have proposed a market access fund that would ostensibly offer affordable loans and subsidies to underserved borrowers. However, it is unlikely that guarantors will act counter to their self-interests and actively promote these loans without the regulatory oversight and lending requirements in the current statute governing the GSEs. There is a big difference between a system in which it is hoped that guarantors will offer to guarantee affordable loans and the current system where it is a core, enforceable requirement that mission-focused loans are an important part of the operation.

In addition, most of the proposed access fee would go to offset the loss of lower pricing for LMI borrowers in the current system that would be lost in a new multi-guarantor system. Thus, it would not produce significant new affordable housing resources, but simply replace existing resources that have proven to be insufficient.

B. Small Lenders Would Be Disadvantaged in a Multi-Guarantor System

A multi-guarantor model is also unfavorable to community banks, credit unions, and other smaller lenders. The current housing finance system supports pricing parity for smaller lenders and helps ensure that large lenders do not have an undue advantage. For example, small lenders are disproportionately dependent on the GSEs' cash window, which provides lenders the option of selling individual loans. This means that smaller institutions do not have to trade their loans for securities or sell their loans to other large banks. To provide pricing parity to smaller lenders, the guarantor/issuer must have the ability to pool costs across the market. This makes it essential that guarantor/issuers serve a national market and have a duty to equitably serve all lenders. Otherwise, if some guarantors/issuers can choose to cream the market, serving only the large lenders and the most lucrative markets, the remaining guarantors will not have sufficient loans from the full market to be able to provide pricing parity to small lenders and still compete in the overall market.

In order to provide this parity, the guarantor/issuers also must be able to pool the credit risk that they hold and reinsure. If all but the catastrophic credit risk is transferred before the loans are purchased by the guarantor/issuers, there is insufficient revenue remaining for the guarantors/issuers to pool the costs and provide viable pricing to small lenders. If substantially all of the credit risk is sold and priced before the loans are acquired by the guarantor/issuer, then these other parties control the access and pricing and they will favor the larger lender transactions, which will be more profitable. Provisions for a small lender security or issuer are offered in some plans to address this problem, but they are inadequate. Securities resulting from small groups of loans from many lenders will be measurably more expensive to assemble. They would also still lack the size to create enough loans to provide the large volume of securities for the economies of scale and liquidity that investors in securities desire and this would also reduce the price community banks received for their mortgages.

Other aspects of the mortgage market already have headwinds for community lenders. Many components of the production of mortgages favor large lenders due to their market size. These larger lenders can demand lower prices for many of the third-party services provided to lenders, and overall, they have the advantage of economies of scale over smaller lenders. These conditions make it all the more important that the government elements of the mortgage provide a level playing field and not contribute to the squeezing out of community bank mortgage lending.

C. A Multi-Guarantor Structure Imposes Higher Costs on the Housing Finance System

In addition to concerns that a multi-guarantor structure would exclude some borrowers, some geographies and smaller lenders, and favor more lucrative markets, the proposed multi-guarantor model imposes higher costs on the housing finance system. There is a distinct risk that multiple guarantors would require a significantly higher rate of return than the more constrained current GSEs. For example, the current half-dozen mortgage insurers currently seek an after-tax return of 14% or more. Like the proposed new guarantors, the present mortgage insurance companies are monoline companies that guarantee credit risk on mortgages. Thus, a system with multiple guarantors is bound to be costlier, as the investors will demand a higher rate of return. Furthermore, expanding the number of new guarantors is likely to increase operating and marketing costs compared to the current system. The guarantors in the new system would also carry more risk due to their smaller and less geographically diversified pools of loans, further adding to their cost and volatility.

D. A Multi-Guarantor Model Has Less Resilience in a Crisis

A multi-guarantor system would also have less resilience in a crisis and contribute to wider swings in the already too volatile housing market. In a systemic crisis, all the guarantors would be subject to the same housing market decline and increase in defaults. As we saw in the Great Recession, private capital like that in a multi-guarantor system rushes in when a market is booming, further feeding the boom, and this capital disappears in tight times when it is needed most. After the crisis, the GSEs and FHA provided most of the credit for home loans as private capital fled. Without this credit, the recession would have been much deeper and longer.

E. Moving to a Multi-Guarantor Model is Likely to Cause Disruption to the Housing Market

Moving to a multi-guarantor model would create a risky transition process and likely cause disruption of the housing market. It is unclear whether or when sufficient new guarantors would be started and capitalized; whether capital markets and investors would embrace the system; and whether such a system would provide effective mortgage access to the entire country.

The model also risks a race to the bottom. Advocates for a multi-guarantor model argue that it would promote competition. However, limiting the number of guarantors to two has both permitted competition and reduced the risks of a race to the bottom in credit quality to maintain market share. Additionally, as outlined in the National Association of Realtor's recent working paper, multiple guarantors would be incentivized to compete for business by varying their credit standards, leading to fragmented standards across the country and undermining the uniformity of standards that allow the credit risk transfer market and TBA system to function.[33] This would create negative consequences for the system as a whole.

Furthermore, a multi-guarantor model doubles down on the conflict between public support and private enrichment. Criticism of the GSEs' past operations is principally based on the conflict between government support for their public functions and their standard corporate structure, which has encouraged them to expand risk and operations to increase their return to shareholders. This structure led the GSEs in the past to overleverage their capital, expand into non-core activities, and take too much risk. Stricter oversight and reforms have addressed core concerns here. A multi-guarantor structure would not correct the misaligned incentives of the past. Rather, adding a half dozen or more private guarantors with little regulatory oversight would simply amplify this conflict, as multiple entities chase profits for their shareholders while serving a critical public purpose in financing access to homeownership.

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[33] Richard Cooperstein, Ken Fears, and Susan Wachter, Working Paper: A Vision for Enduring Housing Finance Reform, The National Association of Realtors (Feb, 7, 2019), available at https://www.nar.realtor/sites/default/files/documents/2019-Working-Paper-A-Vision-For-Enduring-Housing-Finance-Reform.pdf.

IV. To Address the Growing Affordable Housing Crisis, Existing Affordable Housing Programs and Standards Must Be Preserved and Substantial New Efforts Must Be Added

The GSEs are obligated to support a broad housing market, and not just serve the wealthiest and most profitable borrowers. This is done presently through several mechanisms, including more level pricing of the guarantee fee the GSEs charge, an explicit duty to serve underserved markets, and affordable housing metrics and goals.[34] A healthy housing market, especially in the upcoming years, requires that this strong focus on affordable housing continues.

There is a Catch-22 problem here that must be broken. Low-wealth families today face a crisis in both affordable homeownership and rental housing, but access to these assets is essential to building wealth and financial stability for renting or buying. Even in today's increasingly-expensive housing market, home purchases remain relatively affordable compared to previous markets. This is largely due to still historically low mortgage interest rates. Moreover, housing costs of homeownership are often lower than rental costs for a family. However, the strain of high rents hampers many families from qualifying for mortgages, especially the ability to save for substantial down payments.

A. Preserve the Affordable Housing Goals

The statutorily defined duty-to-serve requirements ensure broad availability of mortgage credit throughout the business cycle, which ensures that no region of the nation is left out of the housing finance system. Congress created the obligation within the actual charters of the government sponsored enterprises (GSEs), and they state that the GSEs must "promote access to mortgage credit throughout the nation (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".[35] These obligations continue through the Fair Housing Act of 1968, which Congress passed immediately following the death of Dr. Martin Luther King, Jr. who spent a crucial portion of his life working to address housing discrimination.[36] They are carried forward in the Equal Credit Opportunity Act of 1974 (ECOA) and are implemented through the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) and Housing and Economic Recovery Act of 2008 (HERA).[37] They represent Congress' long-term view that all secondary mortgage market participants have an affirmative duty to further fair lending.

Congress also created the Affordable Housing Goals in 1992 with FHEFSSA and carried them forward in 2008 with HERA to help expand credit access for underserved groups, ensure liquidity in the financial markets, and further fair lending goals.[38] Originally, the goals advanced lending opportunities to low-income families in underserved areas, which resulted in mortgage originators making more affordable loans. The affordable housing goals made a tremendous impact on helping credit-worthy borrowers

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[34] The claim that the affordable housing goals caused the financial crisis has been repeatedly debunked. *See, e.g.*, Financial Crisis Inquiry Commission, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, at xxvii (2010), available at https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

[35] 12 U.S.C. § 1716; 12 U.S.C. § 1451 note

[36] 42 U.S.C. § 3601 et seq.

[37] 15 U.S.C. § 1691 et seq; 12 U.S.C. 4501 et seq; Pub. L. 110-289 (July 30, 2008)

[38] 12 U.S.C. § 4562 (single-family housing goals).

purchase homes. From 2003 through 2012, the National Community Reinvestment Coalition reported that more than 25 million hard-working families nationwide were able to become homeowners due to the goals.[39] Now, they are a metric for accountability by the GSEs' conservator, the Federal Housing Finance Agency, to address underservice to important, and often excluded, market segments such as LMI families, rural communities, and people of color.

In any reform of the housing finance market, the GSEs' affordable housing goals must be strengthened and fully enforced to ensure that their true purpose is realized. They can be a tool for helping to build household wealth in a safe and sound manner while also shoring up economic growth. Further, Congress should continue to require that all participants within the secondary mortgage market be subject to the duty-to-serve mandate and affordable housing goals.

B. Increase Access to Homeownership to Reduce the Persistent and Growing Racial Wealth Gap

Homeownership is the primary way that most middle-class families build wealth and achieve economic stability. Wide access to credit is critical for building family wealth, closing the racial wealth gap, and for the housing market overall. —which in turn, contributes significantly to our overall economy. Today, the opportunity to purchase, maintain and refinance a home has not reached significant portions of low-to-moderate income families and people of color. As a result, these families lag far behind wealthier and white communities that received a head start due to historical lending discrimination supported by our federal government's mortgage policies.

1. The Great Recession Eroded Homeownership Gains and Exacerbated the Racial Wealth Gap

Leading up to the Great Recession, families of color were unfairly targeted with dangerous and toxic mortgages that led to a decline of $1 trillion in wealth for the families who lived near but who did not experience an actual home loan foreclosure.[40] The Great Recession also wiped out thirty years of homeownership gains for African-Americans. It exacerbated the already large racial homeownership gap, with black homeownership rates falling to levels that predate the passage of the Fair Housing Act more than 50 years ago.[41] The current homeownership rate for black families is only 41.6%, as compared to 72.9% for white families.[42]

The Great Recession also aggravated inequality in wealth distributions. According to the Pew Research Center, in 2012 whites had 13 times the wealth of African-Americans and ten times the wealth of

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[39] 9 National Community Reinvestment Coalition, Nationwide Benefits from the Affordable Housing Goals, available at http://www.ncrc.org/images/PDFs/ahg/nationwide%20ahg.pdf.

[40] Debbie Gruenstein Bocian, et al., Collateral Damage: The Spillover Costs of Foreclosures (2012), available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/collateral-damage.pdf.

[41] Laurie Goodman, Alanna McCargo, and Jun Zhu, A Closer Look at the Fifteen-Year Drop in Black Homeownership, Urban Institute (Feb. 13, 2018) available at https://www.urban.org/urban-wire/closer-look-fifteen-year-dropblack-homeownership.

[42] U.S. Census Bureau, Quarterly Residential Vacancies and Homeownership, Second Quarter 2018 (July 26, 2018), available at https://www.census.gov/housing/hvs/files/currenthvspress.pdf.

nonwhite Hispanics.[43] If current trends continue, it could take as long as 228 years for the average Black family to reach the level of wealth white families own today.[44] For the average Latino family, matching the wealth of white families could take 84 years.[45]

Rather than remediate the damage done by subprime lending and its disproportionate impact on borrowers of color, lenders' overcorrections in the market have instead closed off lending options for these communities. Since the financial crisis, many lenders and the GSEs have limited lending and increased prices for borrowers with lower credit scores and/or lower down payments. Borrowers of color, low and moderate-income families, and first-time homebuyers tend to have both lower FICO scores and fewer resources to put towards a down payment due, in part, to historical and ongoing discrimination.

This action is short-sighted and present real safety and soundness concerns for the overall economy since people of color will account for most new household formation going forward. Harvard's Joint Center for Housing Studies found that non-whites, especially Latinos, accounted for 60 percent of household growth from 1995-2015 and predicted that half of millennial households by 2035 would be non-white.[46] Serving these borrowers will be a significant factor in a well-functioning mortgage market.

2. Conventional Credit Remains Tight 10 Years After the Financial Crisis, Preventing Homeownership Opportunity for Working Families

People of color and low- to moderate-income families continue to face challenges in accessing credit. Discrepancies for African-Americans and Latinos persist even as the mortgage market overall has nearly returned to pre-crisis lending volumes. Market indicators highlight how tight lending standards have become, especially for conventional mortgages. In 2016, only 3.1% of conventional loans were made to African-American borrowers, and only 5.8% were made to Hispanic white borrowers.[47] By contrast, non-Hispanic white borrowers received 70.2% of the conventional loans.[48] The conventional market has tightened credit standards and shut out over 6 million creditworthy borrowers since 2009.[49]

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[43] Rakesh Kochhar and Richard Fry, Wealth inequality has widened along racial, ethnic lines since end of Great Recession, Pew Research Center (2014), available at http://www.pewresearch.org/fact-tank/2014/12/12/racialwealth-gaps-great-recession/.

[44] Dedrick Asante-Muhammad, *et al*., The Road To Zero Wealth: How The Racial Wealth Divide Is Hallowing Out America's Middle Class (2017), at 15, available at https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.

[45] *Id.*

[46] Joint Center for Housing Studies of Harvard University, State of the Nation's Housing 2017 (June 2017), available at http://www.jchs.harvard.edu/sites/default/files/harvard_jchs_state_of_the_nations_housing_2017.pdf.

[47] Center for Responsible Lending, New HMDA Data Show Despite Growing Market, African-Americans and Latinos Remain Underserved (2017), available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-2016hmda-policybrief-sep2017.pdf.

[48] *Id*.

[49] Laurie Goodman, Jun Zhu, and Bing Bai, Overly Tight Credit Killed 1.1 Million Mortgages in 2015, Urban Institute (Nov. 21, 2016), available at https://www.urban.org/urban-wire/overly-tight-credit-killed-11-million-mortgages2015 (stating that lenders would have issued 6.3 million additional mortgages between 2009 and 2015 if lending standards had been more reasonable).

In 2016, the average credit score for all new loan originations fell from its high of 750 in 2013 to stand at 732 in December of 2016. However, the average score remained about 33 points above the average score a decade before.[50] At the same time, market-level credit availability indices continue to show that lenders have a very low tolerance for taking reasonable risk for new loans.[51] Recent vintages of new mortgages (loans originated from 2011-2015) have had near zero rates of default.[52] These tight credit standards are preventing homeownership opportunity for credit worthy borrowers of color and low- to moderate-income borrowers. Recent data released by Fannie Mae show that loans to low-income borrowers originated from 2010-2015 had a default rate of just 0.3 percent, approximately equal to that of loans to high-income borrowers originated from 2002-2004.[53] There is ample opportunity in the mortgage market to expand lending to borrowers while still offering responsible loans that borrowers can successfully repay.

3. Pricing Determines Who Can Get a Mortgage and Pricing Fairness should be Improved, Not Exacerbated

Following the mortgage crisis of 2008, FHFA and the GSEs instituted loan level price adjustments (LLPAs) to offset risk from borrowers with lower credit profiles and smaller down payments, despite compelling evidence that when provided with safe and affordable mortgage loans, these borrowers perform well. Further, these increased fees disproportionately impact potential homebuyers of color and low-to-moderate income families, whose ability to save for down payments and credit profiles have been negatively impacted by discrimination and lack of opportunity in the mortgage market.[54]

Underwriting structures determine if borrowers are creditworthy, but pricing structures have a significant impact on whether a creditworthy borrower can afford a mortgage. Differential pricing creates an additional barrier to mortgage credit by increasing the price, sometimes significantly, for some borrowers relative to others. There is evidence of price acting as a barrier even in today's mortgage market. For example, although Fannie Mae's guidelines allow the GSEs to purchase loans with credit scores down to 620 and loan-to-value (LTV) ratios of up to 97 percent, very few loans purchased by the GSEs have these characteristics. One reason is that excessive risk-based pricing by both the GSEs and private mortgage insurers add significantly to the cost of loans for borrowers with lower scores and less wealth for a down payment. For example, the combination of loan-level price adjustments (LLPAs)

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[50] Laurie Goodman *et.al*., Housing Finance at a Glance: A Monthly Chartbook (March 2017), available at https://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-march-2017.

[51] *Id*.; Mortgage Bankers Association, Mortgage Credit Availability Index (2017), available at https://www.mba.org/newsresearch-and-resources/research-and-economics/single-familyresearch/mortgagecredit-availability-index.

[52] Laurie Goodman, Squeaky Clean Loans Lead to Near-Zero Borrower Defaults – And That is Not a Good Thing, Urban Institute (Aug. 31, 2016), available at https://www.urban.org/urban-wire/squeaky-clean-loans-lead-nearzero-borrower-defaults-and-not-good-thing.

[53] Fannie Mae 2016 Annual Housing Activities Report and Annual Mortgage Report, Chart at 19, available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Documents/Fan_M_Goals/2017/Fannie-Mae-2016-AHAR-AMR-FINAL.pdf.

[54] *See* A Failure to Act: How a Decade without GSE Reform Has Once Again Put Taxpayers at Risk, Hearings before the Committee on Financial Services, 115th Cong. (Testimony of Nikitra Bailey), at 18-22, available at https://docs.house.gov/meetings/BA/BA00/20180906/108660/HHRG-115-BA00-Wstate-BaileyN-20180906.pdf.

and mortgage insurance (MI) premiums adds over 300 basis points to the cost of a mortgage for a borrower with a credit score of 620 and an LTV of 97 percent.[55]

Rural borrowers, new emerging households, LMI borrowers and borrowers of color all face obstacles to receiving competitive and affordable mortgage loans. Current statutory provisions governing the GSEs include important measures to further service of these markets: the mandate to serve the broad market, even at a lower rate of return; affordable housing goals; the duty to serve under-reached markets; and the affordable housing funds. These were all included in or reaffirmed by HERA, which passed with strong bipartisan support. These bipartisan compromises, worked out over nearly a decade, must be preserved and expanded in order to meet the needs of the current and future mortgage market, which will include large proportions of these borrowers. Equally important, credit risk transfers must continue to be done by the GSEs through mechanisms that do not price these borrowers or small lenders out of the market. This means credit risk transfers must be executed through reinsurance structures that permit pooling of loans and risk, and not through deeper upfront risk transfers.

Unfortunately, recent proposals for legislative housing finance reform share a common feature that undermines this pricing approach. Deep upfront credit risk transferred to private capital would incentivize actors to segment, rather than pool, credit risk and prices. Segmented pricing puts mortgage credit out of reach for too many credit worthy borrowers by making mortgage debt more expensive.

Proposed housing finance systems that rely on deep, upfront private capital to cover credit risk do not provide a countervailing pressure to market incentives to finely and differentially price credit risk. Even in the current system, in which the GSEs have incentives for risk and price pooling, troubling pricing differences prevent credit worthy borrowers from getting mortgages. Unfortunately, the legislative proposals further erode incentives for pooling and are likely to result in even greater differential pricing. This will make it even harder and costlier for credit worthy borrowers of modest means to afford a mortgage.

C. The Supply of Affordable Housing Must Be Expanded

1. Distressed Asset Sales Undermine Working Families Ability to Purchase Starter Homes

The market for more modestly priced starter homes for first-time homebuyers is especially tight. One factor aggravating this scarcity of modest homes is the distressed asset sales begun by FHA and the GSEs during the crisis. These entities accrued large numbers of loans facing foreclosure. Rather than selling them individually as a local bank would do, they auctioned them off in large pools. While this helped FHA and the GSEs increase their reserves and capital more quickly, hedge funds – the largest buyers of these pools –converted many of the ultimately foreclosed loans into rental properties. This reduced the supply of modest homes for purchase by individuals and altered the character of neighborhoods where

[55] 350/4+225=312.5 basis points. Fannie's Mae's LLPA for this combination of credit score and LTV is a one-time fee of 350 basis points (see page 2, https://www.fanniemae.com/content/pricing/llpa-matrix.pdf). We assumed a LLPA multiple of 4 to convert this upfront fee to an ongoing cost comparable to the MI premium. Borrower paid MI from Genworth for this combination of credit score and LTV is a continuing fee of 225 basis points. See https://mortgageinsurance.genworth.com/pdfs/Rates/11370775.Monthly_Natl.FIXED.0616.pdf.

the percentage of homeowners declined. The sale of these distressed pools has continued, and hedge funds have announced plans to expand their conversion programs.[56] This, along with other factors limiting new starter home construction, including labor and materials shortages and increased costs of both, created a shortage of these starter homes and a substantial barrier to families trying to enter home ownership.[57] Instead of bulk sales to investors, more needs to be with these properties to ensure that families can purchase them to help preserve access to homeownership in low-to-moderate income communities as opposed to only providing rental as an option for working families.

2. The Supply of Affordable Homes Available for Purchase Must Be Increased

Following the housing crash, the single-family construction market has been slow to recover.[58] While new home construction immediately prior to the crisis was at unsustainably high levels, the construction market effectively collapsed and is only now beginning to approach normal production levels. In fact, today's rate of production on new home starts overall is below the rate they were in the 1960s when America's population was much smaller. [59] Usually, housing, which is 20% of the total economy, leads the economy out of the recession. In this case, it was a drag on the overall economic recovery. Since enough homes are not being built, housing prices are rising, and homeownership is less affordable for working families.

Providing sustainable credit for home lending is only half of the equation of a healthy housing market: there also must be an adequate supply of housing to be financed. In the starter home market, as discussed above, there has been a major shortage of homes. Structural obstacles prevent the shortage from being corrected, particularly in growing markets, and several factors depress the number of affordable modest homes. The largest factor is the unmet need for additional new homes to keep up with the growing number of households and the natural obsolescence of homes no longer being usable. Overall, the housing construction market recovered very slowly from the recession, with volumes only now approaching normal levels that predated the housing boom and crisis.

Builders are focusing, though, on larger homes that are more profitable. Indeed, average new home sizes continue to grow to record levels. First, this reflects the substantial fixed costs in developing and

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[56] Julia Gordon, The Dark Side of Single-Family Rental, ShelterForce (July 30,2018), available at https://shelterforce.org/2018/07/30/the-dark-side-of-single-family-rental/. Others have argued that these sales are beneficial in that the buyers have fewer restrictions on the loan modifications they can offer. Laurie Goodman and Dan Magder, Selling HUD's Nonperforming Loans: A Win-Win for Borrowers, Investors and HUD, Urban Institute (January 2016), available at https://www.urban.org/sites/default/files/publication/76626/2000568-Selling-HUD-s-Nonperforming-Loans-A-Win-Win-for-Borrowers-Investors-and-HUD.pdf. A better approach is reform of the HUD foreclosure process; substantial improvements have been implemented in the GSE process.

[57] Michael Neal, Residential Construction Down in June, Eye on Housing, National Association of Homebuilders (July 18, 2018), available at http://eyeonhousing.org/2018/07/residential-construction-down-in-june/?utm_campaign=EOE2018&_ga=2.126940237.1759872631.1535413976-631253769.1535413976.

[58] Michael Neal, Residential Construction Down in June, Eye on Housing, National Association of Homebuilders (July 18, 2018), available at: http://eyeonhousing.org/2018/07/residential-construction-down-in-june/?utm_campaign=EOE2018&_ga=2.126940237.1759872631.1535413976-631253769.1535413976

[59] Peter Coy, America Isn't Building Enough New Housing, Bloomberg Businessweek, February 11, 2019, available at, https://www.bloomberg.com/news/articles/2019-02-11/america-s-housing-market-isn-t-building-enough-new-homes.

building a new house, which proportionately is a greater burden on smaller homes.[60] Second, it has been challenging for builders to secure land and permits for new construction, and especially for higher-density construction. This has led California to enact new limits on the power of local communities to block additional housing. Further efforts are needed to encourage and facilitate new construction to meet the increasing demand for affordable houses. Most of this reform must occur at the state and local level. A second factor, discussed above, that reduces the supply of modest homes for sale is the substantial number of – often modest – homes pulled out of the ownership market through bulk distressed loan sales by FHA and the GSEs. While crisis era pressures may have justified these measures to more quickly restore the financial stability of these entities, today these public interest entities should recycle properties back into the ownership market to both preserve that market and the communities where the houses are located.

3. The Supply of Affordable Rental Housing Must Be Increased

Since 2008, the shortage of affordable housing has grown, the percentage of families burdened by the cost of rent remains high, and the problem is remaining dire today. Even in the housing boom years, many families were struggling with unaffordable rent. The percentage of cost-burdened renters, those paying more than 30% of their income for rent, grew from 40% in 2001 to 46% in 2007.[61]

More than half of families making less than $30,000 per year and over half of families age 65 and older that rent are severely rent burdened today. Furthermore, more than 30% of all Black and 28% of all Hispanic renters pay over half of their incomes for rent.[62]

Following the crisis, construction of multifamily housing increased, but this was primarily the construction of higher-end rental housing. Overall, the stock of affordable housing has declined since the crisis, with more units becoming unavailable or being priced unaffordable. Federal support for affordable housing has been far below needed levels for many years, and it is falling further behind. Available housing subsidies only reach a small portion of families who are rent burdened. Looking forward, the major funding source for affordable housing, the Low-Income Housing Tax Credit, faces challenges resulting from the recent tax changes. The reduction in the corporate tax rate has reduced the value of the housing tax credit. To start making progress, support for affordable rental housing must dramatically increase.

The GSEs currently play an important role in supporting affordable rental housing. They are the largest provider of funding for multi-family housing, and this support is particularly vital in the current rental housing crisis. The GSEs' support for multifamily housing sustained even during the housing crash, and

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[60] Ashok Chaluvadi, National Association of Home Builders, Builder Materials Prices and Labor Access Top Challenges for 2018 (Jan. 16, 2018), available at http://eyeonhousing.org/2018/01/building-materials-prices-and-labor-access-top-challenges-for-2018/; Carmel Ford, Cost of Constructing a Home, National Association of Home Builders (Dec. 1, 2017), available at http://www.nahbclassic.org/generic.aspx?genericContentID=260013/.

[61] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 2018, available at http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf.

[62] Joint Center for Housing Studies of Harvard University, Renter cost Burdens By Race and Ethnicity, available at: http://www.jchs.harvard.edu/ARH_2017_cost_burdens_by_race.

their portfolios continue to perform strongly.[63] Their multifamily delinquency rates through fourth quarter 2018 were 0.06 percent and 0.01 percent, respectively for Fannie Mae and Freddie Mac.[64] There have been calls to constrict or eliminate this support but doing so would aggravate an already dire rental housing market and further stress families struggling to secure a decent place to live.

4. FHA Must be Reformed and Modernized to Remain Effective and Achieve its Goal of Promoting Homeownership

FHA lending played a critical role following the housing crash of 2008. During the recession, as credit standards tightened in the conventional market, the FHA took on a much broader role than it had previously. This was a necessary countercyclical influence in the fallout from the era of subprime mortgages, but it marked changes within both markets. While FHA has historically provided access to credit to lower-income borrowers and first-time homebuyers, it has emerged and remained the mortgage credit source for over 40% of the low-income home purchase market.

FHA has become the primary source of mortgage credit for borrowers of color, including upper-income borrowers who could be well served by conventional lenders. Compared to conventional loans FHA loans can be costlier over the life of the loan, particularly due to the life of the loan premium and lender overlays on FHA loans. Further, increasingly, lenders have also been less willing to make these loans.[65] There is an urgent need for federal regulators to better enforce fair lending requirements to ensure a more robust conventional mortgage market that serves borrowers of color.

While FHA should not be the only source of mortgage credit for borrowers of color, it does provide a large share of first-time home purchase loans. Thus, FHA is critical and deserve ongoing federal support, and reductions in funding would significantly impact affordable lending.[66] The FHA program must be adequately funded and modernized to ensure its viability.

Two important and interrelated FHA reforms include reform of the False Claims Act and increased technology funding. There is a recognized need to clarify what types of errors can trigger liability under the False Claims Act. The statute imposes treble damages against anyone who submits a false claim to

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[63] Ethan Handelman and Shekar Narasimhan, Do No Harm: GSE Multifamily Works, Urban Institute Housing Policy Finance Center, May 2016, available at https://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-finance-reform-incubator/ethan-handelman-and-shekar-narasimhan-do-no-harm-gse-multifamily-works; See also, Adam DeSanctis, Commercial and Multifamily Mortgage Delinquencies Remain Low in the Fourth Quarter of 2018, Mortgage Bankers Association, March 7, 2019, https://www.mba.org/2019-press-releases/march/commercial-and-multifamily-mortgage-delinquencies-remain-low-in-the-fourth-quarter-of-2018.

[64] Adam DeSanctis, Commercial and Multifamily Mortgage Delinquencies Remain Low in the Fourth Quarter of 2018, Mortgage Bankers Association, March 7, 2019, https://www.mba.org/2019-press-releases/march/commercial-and-multifamily-mortgage-delinquencies-remain-low-in-the-fourth-quarter-of-2018.

[65] As banks have exited the market or reduced their FHA lending, the market share of the 10 largest lenders has declined and nonbank lenders have become the dominant market segment. *See* Michele Lerner, The Mortgage Market is Now Dominated by Non-Bank Lenders, Washington Post, Feb. 23, 2017, https://www.washingtonpost.com/realestate/the-mortgage-market-is-now-dominated-bynonbanklenders/2017/02/22/9c6bf5fc-d1f5-11e6-a783-cd3fa950f2fd_story.html?utm_term=.577814ac35f5.

[66] Peter Smith and Melissa Stegman, Repairing a Two-Tiered System: The Crucial but Complex Role of FHA, Center for Responsible Lending, at 18 (May 2, 2018), available at https://www.responsiblelending.org/research-publication/repairing-two-tiered-system-crucial-complex-role-fha.

the government, including FHA insurance payments. Because these treble penalties can cost a far greater amount than the loan itself, this has the potential to decrease the appetite for making FHA insured loans that have only a modest risk of defaulting.[67] This has led to lenders imposing credit overlays on FHA's standards, and contributed to many larger lenders withdrawing from FHA lending entirely. FHA attempted to address the False Claims Act ambiguity by tying loan defects to remedies, but this effort was not implemented due to inadequate funding.[68]

Although FHA received technology funding in the 2019 budget bill, a sustained source of funding is necessary to address desperately needed technology upgrades.[69] FHA's book of business is performing strongly, but this growth has paradoxically worsened FHA's basic operations. Under FHA's authorizing statute, the entirety of FHA's revenue is sent to the Mutual Mortgage Insurance Fund (MMIF) and cannot be used for FHA's operations, even if that funding could significantly improve operational or program efficiency. As a result, FHA's business success has left it stretched to have enough resources to manage its loans. FHA needs increased resources to exercise a reasonable quality control system.[70]

5. Maintain Flexibility in Determining Down Payments and Creating Initiatives to Fuel Lending

Removing regulator flexibility in establishing down payments in housing finance reform and mandating down payments would unnecessarily restrict access to credit for lower-wealth families. As an initial matter, these mandates overlook the fact that borrowers must also save for closing costs – roughly 3 percent of the loan amount – on top of any down payment required. And, the mandates would increase the number of years that borrowers would need to save for a down payment. An analysis by the Center for Responsible Lending demonstrates that it would take the typical family 17 years to save for a 10 percent down payment and 11 years to save for a 5 percent down payment. This time frame is greatly expanded for African-American and Latino borrowers. Considering that many of these households have limited wealth, down payment mandates could significantly reduce the number of future first-time homebuyers.[71] This reduced pool of buyers could lead to lower home prices, more difficulty selling an existing home, and even some existing borrowers defaulting on their mortgage.

Not only is there a huge cost to legislatively mandating down payments, but there is also a limited benefit in terms of reducing default rates. When looking at loans that already meet the product

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[67] *See* The Federal Housing Administration Can Do More With More, April 2017, available at https://www.brookings.edu/research/the-federal-housing-administration-can-do-more-with-more/.

[68] *Id.*

[69] *Id.*

[70] *Id*.

[71] *See* The State of the Nation's Housing, Joint Center for Housing Studies, at 3 (2013) (stating that "[m]inorities—and particularly younger adults—will also contribute significantly to household growth in 2013–23, accounting for seven out of ten net new households. An important implication of this trend is that minorities will make up an ever-larger share of potential first-time homebuyers. But these households have relatively few resources to draw on to make down payments. For example, among renters aged 25–34 in 2010, the median net wealth was only $1,400 for blacks and $4,400 for Hispanics, compared with $6,500 for whites. Even higher-income minority renters have relatively little net wealth, with both blacks and Hispanics in the top income quartile having less than half the average net wealth of whites. Proposed limits on low-down payment mortgages would thus pose a substantial obstacle for many of tomorrow's potential homebuyers.").

requirements for a Qualified Mortgage, a UNC Center for Community Capital and CRL study shows that these requirements cut the overall default rate by almost half compared with loans that did not.[72] Layering on a down payment requirement on top of these protections produces a marginal benefit.[73] This makes sense, because risky product features and poor lending practices caused the crisis by pushing borrowers into default, and the Dodd-Frank Act reforms address these abuses. The Qualified Mortgage and Ability-to-Repay reforms restrict risky features such as high fees, interest-only payments, prepayment penalties, yield-spread premiums paid to mortgage brokers, lack of escrows for taxes and insurance for higher-priced mortgage loans, teaser rates that spiked to unaffordable levels even with constant interest rates and outlawing no-doc loans. These reforms address the unaffordable and abusive loan products that caused the crisis.[74]

Maintaining down payment flexibility has allowed the FHFA to permit Fannie Mae and Freddie Mac the product innovation needed to create loans with a 97% loan-to-value ratio helping many first-time home buyers to become homeowners, including millennials.[75]

D. New Ideas to Strengthen Affordable Housing

America's affordable housing crisis is real and deserves a federal response equal to the problem. Instead, in recent years, programs designed to create housing opportunities and/or assistance have been challenged every budget year. Now is not the time for retreat. We must ensure that every American has the opportunity to live in safe, decent, and affordable housing and double down on our nation's commitment to making all communities places of opportunity. Substantial expansion of existing programs and new initiatives must be considered and implemented. These include:

1. Providing down payment assistance for homeownership reentry by families wrongfully harmed by the subprime lending crisis.

Communities of color lost trillions of dollars during the foreclosure crisis, and evidence shows that many of those borrowers were steered into toxic mortgages even when they qualified for safer and more

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[72] Roberto G. Quercia, Lei Ding, Carolina Reid, Balancing Risk and Access: Underwriting Standards for Qualified Residential Mortgages, Center for Responsible Lending and UNC Center for Community Capital (Revised March 5, 2012), available at http://www.responsiblelending.org/mortgage-lending/researchanalysis/Underwriting-Standards-for-QualifiedResidential-Mortgages.pdf (stating that "[l]oans consistent with the QM product features—which include both prime and subprime loans—have fared extremely well, with just 5.8 percent of loans either 90+ days delinquent, in the foreclosure process, or foreclosed upon as of February 2011. In comparison, the default rate for prime conventional loans in our sample was 7.7 percent, nearly two percentage points higher…[T]he rates for the subprime and Alt-A market segments [were] 32.3 and 22.3 percent, respectively.").

[73] *Id.* at 18.

[74] *See* Debbie Gruenstein Bocian, Wei Li, Carolina Reid, and Roberto G. Quercia, Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures, Center for Responsible Lending and UNC Center for Community Capital (November 2011), available at http://www.responsiblelending.org/mortgagelending/research-analysis/LostGround-2011.pdf).

[75] *See* Jung Choi, Jun Zhu, Laurie Goodman, Bhargavi Ganesh, and Sarah Strochak, Millennial Homeownership: Why Is It So Low, and How Can We Increase It?, Urban Institute (Jan. 2019), available at https://www.urban.org/sites/default/files/publication/98729/2019_01_11_millennial_homeownership_finalizedv2.pdf.

responsible loans with cheaper costs.[76] Further, the spillover impact of the crisis hurt people in communities of color who did not actually experience foreclosure but happened to live in proximity to foreclosure. CRL estimates this cost to African-American and Latino communities to total $1 trillion.[77]

CRL's research shows that instead of being a boom to homeownership, subprime lending produced a reduction of 1 million homeowners, including 85,000 African-Americans and Latinos.[78] Examining the data further, shows that between 1998 and 2006 only 1.4 million first-time homeowners purchased their home with a subprime loan[79] CRL research shows that most of subprime lending occurred to borrowers who refinanced a primary residence, and that borrowers of color were disproportionately impacted by foreclosure and loss their homes at a greater rate than white borrowers.[80] The disparities in foreclosure held true even after controlling for differences in income between whites and people of color.[81] Upper-income African-American borrowers received subprime loans at 2.7 times a greater rate than upper-income white borrowers.[82] Moreover, upper-income African-American women were 5 times and upper-income Latinas were nearly 4 times more likely to receive a subprime loan than an upper-income white male.[83] The scale of this down payment assistance program must match the huge harm inflicted on these families and communities.

2. **Expanding the Housing Trust Fund and Capital Magnet Fund to demonstrate a broader commitment to access to safe, decent, and affordable housing for working families.**

The funds should have a minimum of $3.5 billion allocated annually. According to the National Low Income Housing Coalition, families in every state and community, including extremely low-income

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76Rick Brooks and Ruth Simon Subprime Debacle Traps Even Very Credit-Worthy, Wall Street Journal, December 2007, available at https://www.wsj.com/articles/SB119662974358911035.
77 CRL, Collateral Damage, The Spillover Costs of Foreclosure, October 2012, available at http://www.responsiblelending.org/mortgage-lending/research-analysis/collateral-damage.pdf.
78 CRL: Subprime Lending: A Net Drain on Homeownership, March 2007, available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/Net-Drain-in-Home-Ownership.pdf. CRL derived data on subprime loans used for home purchase versus refinance from a proprietary database for 1998- 2004, and from SMR Research Corp and Inside Mortgage Finance for 2005-2006. The specific percentages by year are shown in the chart below. Totals may not add to 100% because a small percentage of loans in the database are listed as "other purpose."

	1998	1999	2000	2001	2002	2003	2004	2005	2006
% Subprime Refinance	67.2	66.9	60.4	64.8	67.1	67.9	60.5	60.0	56.0
% Subprime Purchase	30.5	31.6	38.5	35.2	32.8	32.1	39.5	40.0	44.0

79 Id.
80 CRL, Foreclosures by Race and Ethnicity: The Demographics of a Crisis, June 2010, available at, https://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf.
81 Id.
82 The Opportunity Agenda, Subprime Lending: A Threat to Opportunity in America, available at, https://www.issuelab.org/resources/145/145.pdf?download=true.
83 Consumer Federation of America, Women are Prime Targets for Subprime Lending: Women are Disproportionately Represented in High-Cost Mortgage Market, December 2006, available at, https://consumerfed.org/pdfs/WomenPrimeTargetsStudy120606.pdf.

workers are housing insecure.[84] Many of these families pay more than fifty percent of their income in rent and face a shortage of affordable rental housing, including 71% of extremely low income households.[85] Today, there is a shortage of 7.2 million rental homes affordable to the nation's 11.2 million extremely low income renters.[86] This means that for every 100 extremely low income households, there are just 35 rental homes that are affordable and available to them.[87] These families struggle with choosing rent over food and medicine, and some end up homeless.[88] This investment will be a strong first step toward ensuring rental housing affordability and that CDFIs can support homeownership activities, including production, preservation, rehabilitation, down-payment, closing cost, and interest-rate buy-down assistance for first-time homebuyers.

3. **Providing down payment assistance for first time homebuyers with lower wealth and/or credit scores in recognition of the federal government's historic role in fostering mortgage lending discrimination, an effort that will start addressing the resulting racial wealth gap.**

As stated above, seven out of ten future homebuyers will be borrowers of color.[89] A well-functioning housing finance system requires that these borrowers have access. Looking forward, the housing market is increasingly comprised of more families without as much intergenerational wealth. Households of color – especially Latino families – account for the largest growth in households today[90], making it increasingly important that they are served. Serving these borrowers is also important for other Americans as well. These are the borrowers that many older Americans will need to sell their homes to ensure a successful retirement.

4. **Requiring national banks to ensure that ten percent of their QM mortgage lending and small business lending occurs in their communities where at least 20 percent of the population has experienced poverty for the last 30 years in exchange for FDIC insurance or to have their loans sold to the GSEs or Ginnie Mae.**

This idea stems from Rep. Jim Clyburn's 10-20-30 plan that was part of the American Recovery and Reinvestment Act of 2009.[91] According to the American Community Survey estimates for 2012-2016, there are 392 of these counties across the United States.[92]

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[84] A Legislative Proposal to Provide for a Sustainable Housing Finance System: The Bipartisan Housing Finance Reform Act of 2018, United States House of Representatives Committee on Financial Services, 115th Cong. 2 (2018) (testimony of Diane Yentel), available at https://financialservices.house.gov/uploadedfiles/12.21.201_diane_yentel_testimony.pdf.

[85] *See id* at 2-3.

[86] The National Housing Trust Fund Letter, December 3, 2018, available at https://nlihc.org/sites/default/files/HTFSupport_Sign-on_Letter_120418.pdf.

[87]Id.

[88] Id.

[89] Joint Center for Housing Studies of Harvard University, State of the Nation's Housing 2017 (June 2017), available at http://www.jchs.harvard.edu/sites/default/files/harvard_jchs_state_of_the_nations_housing_2017.pdf.

[90] Id.

[91] Pub.L. 111-5.

[92] https://www.everycrsreport.com/reports/R45100.html#_Toc506295929.

5. Strengthening and fully enforcing the nation's fair lending laws.

Since 2006, 561,472 victims of housing discrimination filed complaints with federal agencies charged with protecting them.[93] Segregation continues to hamper our nation's ability to ensure that all Americans live in communities of opportunity. These circumstances called for the Department of Housing and Urban Development (HUD) to issue its long overdue, and statutorily established, Affirmatively Furthering Fair Housing Rule, requiring local communities to develop plans to alleviate segregation. The rule was issued in 2015 after years of development and review. In August 2018 HUD announced that it is revisiting this rule, and there are even calls to repeal it.[94] But weakening the rule would be a major step backward and would delay community unification and equity.

Similarly, there are calls to hobble or even repeal the use of disparate impact analysis and enforcement in lending.[95] This analysis provides that when a practice produces a disparate negative impact on groups, it should continue only if there is a business need for the practice and an alternative approach is unavailable. Continuing this approach is especially important given the exponential growth occurring in the use of artificial intelligence in decision making, including loan eligibility. Machine learning holds much promise, but it also can bring in discriminatory and unnecessary factors. Disparate impact analysis encourages creative approaches that both increase effectiveness and inclusiveness. This process and the value of disparate impact analysis was recently pointed out, and endorsed by, the largest personal loan company in the country, Lending Club, in its responses to requests for input by the CFPB.[96] FHFA must require that all users of the Common Securitization Platform adhere to the nation's fair lending laws and established Enterprises' chartered duty-to-serve public interest mandates. The GSEs should also be required to insert fair housing protections into the eligibility guidelines of all of its affordable housing programs including LIHTC, State Housing Finance Agency, Tax Credit and other programs. This would include an affirmative obligation to build housing in accordance with the accessibility requirements required by fair housing laws as well as an affirmative obligation to further fair housing. Taking care to reach rapidly-growing markets of borrowers of color when structuring business practices is good business. And it is a false choice that inclusiveness is incompatible with growth and efficiency.

6. Eliminating Loan Level Price Adjustments.

Following the mortgage crisis of 2008, which was found to be caused by Wall Street's appetite for excessive profits, market overcorrections emerged that led to excessive pricing of risk in the system. FHFA instituted LLPAs to offset risk from borrowers with lower credit profiles and smaller down payments, despite compelling evidence that when provided with safe and affordable mortgage loans, these borrowers perform well. Further, these increased fees disproportionately impact potential homebuyers of color and low-to-moderate income families whose ability to save for down payments

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[93] Shanti Abedin et. al., Making Every Neighborhood A Place of Opportunity 2018 Fair Housing Trends Report, National Fair Housing Alliance, April 2018, p. 13, available at https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report_4-30-18.pdf.

[94] Affirmatively Furthering Fair Housing: Streamlining and Enhancements, 83 Fed. Reg. 159 (August 16, 2018) ds-Report_4-30-18.pdf.

[95] The Supreme Court recently held that disparate impact claims are cognizable under the Fair Housing Act. *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project*, 135 S.Ct. 2507 (2015).

[96] Comment of Lending Club on CFPB Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities; Maintain Disparate Impact Policy (June 23, 2018), available at https://www.regulations.gov/document?D=CFPB-2018-0012-0075.

and credit profiles have been negatively impacted by discrimination and lack of opportunity in the mortgage market that has been previously been discussed.[97] As discussed in previous sections, the distribution of GSE capital costs also must be more equitably distributed so that lower wealth households do not disproportionately bear the cost of insuring against another systemic market failure.

CONCLUSION

Homeownership is a primary pathway for families to secure decent housing and financial advancement, and affordable rental housing is likewise critical. Home lending is a key business line for community banks, who often are the primary financial institution in many rural areas. The GSEs have played an essential role in supporting a broad housing market that serves all participants and supports a vibrant national housing market. The considerable reform over the last ten years to strengthen the GSEs should be continued, and affordable housing efforts must be expanded. Proposals, though, that would dramatically alter the housing system would reduce the effectiveness of the system and threaten disruption of the entire housing market.

[97] For a more detail discussion of how discrimination contributes to lower credit scores for borrowers of color see, Racial Justice Project of the National Consumer Law Center, Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination (May 2016), available at https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.