ICBA
Independent Community
Bankers of America®

June 26, 2023

Sandra Thompson
Director
Federal Housing Finance Agency
400 7th St SW
Washington, DC 20219

RE: Fair Lending, Fair Housing, and Equitable Housing Finance Plans

Dear Director Thompson,

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to provide comments on the Federal Housing Finance Agency's (FHFA) proposed rule that seeks to address barriers to affordable, safe, and sustainable housing opportunities and codify many of the existing and recent directives from FHFA regarding fair lending, fair housing, and the Equitable Housing Finance Plans to Fannie Mae and Freddie Mac (the Enterprises). The proposal broadly attempts to establish an improved framework to better enable FHFA and the Enterprises to fulfill their statutory obligations in these areas.

Many of the goals and initiatives outlined in the proposed rule are admirable and even necessary to help ensure that the Enterprises remain a critical source of liquidity, stability, and assistance in the residential secondary mortgage market. The Enterprises must continue to promote access to credit throughout the country, including low and moderate-income borrowers and borrowers of color. Any existing and future policies should not perpetuate or

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding $5.8 trillion in assets, $4.8 trillion in deposits, and $3.8 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at [www.icba.org.](http://www.icba.org)

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widen racial disparities or in any way undermine equitable access to the American dream of homeownership. The proposed rule also addresses the importance of Enterprise transparency and accountability going forward.

As relationship-based lenders deeply invested in their communities, community banks take fair lending incredibly seriously. Indeed, they excel at and pride themselves in serving their local communities with integrity and providing financial products to all credit worthy borrowers that seek them. For example, they often specialize in tailoring mortgage loans that meet a specific borrower's unique needs but may not easily fit within the conventional mortgage market box. Many also continue to make conventional agency loans and therefore depend on Fannie Mae and Freddie Mac to access the secondary market. This access allows them to free up capital and make this option consistently available for their customers.

In recent years, community banks have found it increasingly challenging to sell and service for the Enterprises due to increased costs and regulatory burdens. Additional requirements and restrictions often create the unintended effect of further disincentivizing community banks from utilizing the secondary market and may even force them to cease mortgage production and servicing altogether. This creates the unfortunate side effect of additional industry consolidation and further concentrates loan servicing rights into the hands of the largest aggregators and non-bank servicers.

ICBA is therefore concerned that some of the changes the proposal seeks to codify will exacerbate this trend. Last year, for example, we highlighted challenges stemming from FHFA's recent requirement that Enterprise servicers maintain and transfer fair lending data points on their loans. Included in the list of data points is the customer's preferred language obtained from the Supplemental Consumer Information Form (SCIF), another recent addition to the origination requirements. As you know, implementing these changes is typically not a seamless or straightforward process. The data does not automatically transfer from the loan origination systems into a bank's servicing systems. In fact, for most banks it requires time-consuming system updates that add to the overall cost to close and service a loan. This is just one change that represents an overall trend of increased costs and complexity that are steadily making selling and servicing Enterprise loans more prohibitive for many small lenders.

ICBA Recommendations

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Perhaps more significant than any specific policy change or regulatory challenge in the proposed rule is a broader concern that the Enterprises will remain in conservatorship for the foreseeable future. Even after nearly fifteen years, both Enterprises remain undercapitalized and are far away from being deemed fully recapitalized in accordance with their Enterprise Capital Rule Framework (ERCF). Presently there is no clear path out of conservatorship. **We strongly urge FHFA to act in accordance with the Housing and Economic Recovery Act (HERA) and seriously begin the process of ending the conservatorship by working with Treasury to resolve the government's ownerships of the Enterprises.**

It is first critical that FHFA fully utilize its resources and authority as regulator and conservator to ensure the Enterprises are safe, sound, and fully recapitalized in accordance with their Enterprise Capital Rule Framework (ERCF). Resolving the government's ownership of the Enterprises will expedite their ability to recapitalize by allowing them to raise outside equity. As currently structured, the Enterprises can only build capital through retained earnings. Given the large amounts of capital needed to be considered fully capitalized, it will take at least ten years for the Enterprises to meet those requirements and be well positioned to exit conservatorship. Further, it is important FHFA address the fact that the sweep of Enterprise earnings has only been paused until they are recapitalized. Absent any changes to the preferred stock purchasing agreements (PSPAs), this means that they will then be required to resume sweeping any excess earnings to the Treasury, effectively making it impossible to exit conservatorship.

ICBA is greatly concerned that the lack of progress in resolving this issue by FHFA and the Treasury endangers the safety and soundness of both Enterprises and could pose a threat to the stability of the mortgage market. Perpetual conservatorship is simply not sustainable over the long term.

As it stands, new programs and plans, even those outlined in the proposed rule, can always be overturned if a new administration decides to appoint a new FHFA director with different housing priorities. We are concerned that this potentiality creates a perception that FHFA acts according to a political agenda established by incoming administrations. This is not healthy for the housing system and creates more uncertainty for the GSEs, potential investors, and the institutions that do business with them. This dynamic severely undermines the sustainability of almost any new plan, product or program, no matter how admirable and well intentioned, and wastes valuable resources on projects that may or may not achieve their stated goals.

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A recent example came out in March of this year when FHFA announced their implementation plan to adopt a new bi-merge credit reporting policy as well as two new credit scoring models – FICO 10T and VantageScore 4.0. Their plan includes an aggressive implementation timeline that does not seem to allow for the type of comprehensive, transparent, and iterative stakeholder engagement process necessary to successfully launch a project of this magnitude and complexity. ICBA is concerned that rushing the implementation could have massive unintended consequences on the housing finance system and community banks in particular. It is unclear why FHFA has chosen such an ambitious timeline, but their approach seems to be at odds with a broad coalition of industry stakeholders. ICBA worries that perpetual conservatorship can result in controversial policy decisions that may not be in the best interest of the Enterprises. Such decisions may even contribute to stakeholder uncertainty or market disruption if it appears certain actions are politically or ideologically motivated.

Perpetual conservatorship also creates a regulatory whipsaw effect that makes it increasingly challenging for community banks to keep up with new regulatory requirements. Ongoing conservatorship ultimately creates a destabilizing effect in the housing finance system. Unfortunately, it also intensifies regulatory uncertainty and adds to many of the ongoing challenges preventing community banks and other small lenders from accessing the secondary market. We therefore urge FHFA to work closely with Treasury and focus its resources on ending the conservatorship in a safe and sound manner.

ICBA appreciates the opportunity to comment on this proposed rule and looks forward to working with FHFA on this issue in the coming months. Please contact the undersigned if you have any questions regarding this letter.

Sincerely,

Tim Roy
Assistant Vice President- Housing Finance Policy

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