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United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

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RANKING MEMBER

July 15, 2022

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: Wednesday, July 20, 2022, Full Committee Hearing entitled, "Housing in America: Oversight of the Federal Housing Finance Agency"

The Full Committee will hold a hearing entitled, "Housing in America: Oversight of the Federal Housing Finance Agency" on Wednesday, July 20 at 10:00 am E.T. in room 2128 of the Rayburn House Office Building and on the Webex platform. There will be one panel with the following witness:

- **The Honorable Sandra L. Thompson**, Director, Federal Housing Finance Agency

Background

Established by the Housing and Economic Recovery Act of 2008 (HERA), the Federal Housing Finance Agency (FHFA) is responsible for the supervision, regulation, and oversight of the government-sponsored enterprises (GSEs), which include Fannie Mae and Freddie Mac (the Enterprises), as well as the Federal Home Loan Bank System, which includes 11 Federal Home Loan Banks (FHLBs) and the Office of Finance.[1] FHFA oversees these entities with the goal of maintaining a competitive, liquid, efficient, and resilient housing finance market.[2] FHFA has served as conservator for the Enterprises since 2008, with the aim of ensuring the Enterprises remain financially sustainable while providing market stability for borrowers and renters.

FHFA and the Enterprises play a key role in the U.S. housing finance market. By providing stability and support for the secondary mortgage market, the Enterprises create liquidity in the housing market and facilitate access to homeownership and affordable rental homes. The Enterprises purchase, package, and guarantee single-family home loans as well as multi-family housing loans.[3] In times of economic crisis, the Enterprises function in a countercyclical manner by ensuring access to mortgage credit when the private sector pulls back from the market.

Sandra L. Thompson serves as the Director of FHFA. She was appointed as Acting Director of FHFA in 2021 following Mark Calabria's resignation.[4] Prior to her appointment, Director Thompson served as Deputy Director of FHFA's Division of Housing Mission and Goals and before that led the Federal Deposit Insurance Corporation's (FDIC) Bank Supervision Department. President Biden's nomination of Sandra Thompson to be the Director of FHFA, and her Senate confirmation in May 2022, marked a milestone as she is the first woman and woman of color to hold the position.

Housing Trends During the Pandemic

The onset of the COVID-19 pandemic in 2020 led to significant losses of work, pay, and financial stability, especially among lower-income households and households of color. As a result, many homeowners fell behind on their housing costs leading to increased delinquencies and the need for

[1] FHFA, *About Us* (accessed Jul. 12, 2022).
[2] *Id.*
[3] Urban Institute, *The GSEs' Shrinking Role in the Multifamily Market* (Apr. 2015).
[4] FHFA, *FHFA Director Mark Calabria's Statement on the U.S. Supreme Court's Collins v. Yellen Decision* (Jun. 23, 2021).

forbearance.[5] Due in large part to swift and decisive action by Congress, FHFA, and other federal agencies to provide forbearance and other relief for struggling borrowers with federally backed mortgages (which are discussed in greater detail below), the economy was spared a wave of foreclosures and evictions, as well as all of the associated economic fallout experienced during the 2008 financial crisis.

As the pandemic waned, the housing market remained strong as interest rates bottomed out, competition for homes heated up, and home prices skyrocketed.[6] Mortgage originations reached record highs in 2021 at $4.8 trillion, surpassing the previous record of $4.1 trillion in 2020 and more than doubling 2019 pre-pandemic levels ($2.4 trillion).[7] Leading up to the pandemic, home prices were rising at an average of 5.9% annually between 2014 and 2019.[8] In stark contrast, home prices increased by 10.8% between the fourth quarters (Q4) of 2019 and 2020 and increased another 17.5% between Q4 2021 and 2022.[9] As of mid-May 2021, half of all homes in the U.S. sold for above the listing price and the number of homes selling for more than $100,000 over the listing price increased by more than 260% from 2021 to 2022.[10] Many borrowers were driven into intense bidding wars, and in many cases, homebuyers either fully or partially waived contingencies.[11] This housing boom activity resulted in an annual net income in 2021 of $22.2 billion for Fannie Mae and $12.1 billion for Freddie Mac.[12]

FHFA's Pandemic Response and Relief

Implementing Protections from the CARES Act and American Rescue Plan Act

During the pandemic, FHFA implemented Congressionally mandated protections in the CARES Act[13] for homeowners, landlords, and tenants to keep families stably housed. These protections included mortgage forbearance relief, foreclosure protections, and eviction moratoria. FHFA's foreclosure moratorium as mandated under the CARES Act expired on July 31, 2021;[14] FHFA extended the moratorium administratively through September 30, 2021.[15] When CFPB put in place a rule to protect borrowers impacted by COVID-19-related hardships from foreclosure through the end of 2021,[16] FHFA coordinated with the CFPB to take preemptive steps to bring Enterprise servicers into compliance with the rule even before its official implementation.[17]

To support homeowners at risk of foreclosure, Congress created a $10 billion Homeowner Assistance Fund (HAF) in the American Rescue Plan Act of 2021.[18] In April 2022, FHFA announced that the Enterprises would require servicers to halt foreclosures for up to sixty days when servicers have been notified that borrowers have applied for and are awaiting assistance through HAF.[19] Today, homeowners

[5] House Committee on Financial Services, *Prioritizing Fannie's and Freddie's Capital over America's Homeowners and Renters? A Review of the Federal Housing Finance Agency's Response to the COVID-19 Pandemic* (Sep. 16, 2020).
[6] House Committee on Financial Services, *Boom and Bust: Inequality, Homeownership, and the Long-Term Impacts of the Hot Housing Market* (Jun. 29, 2022).
[7] Urban Institute, *Housing Finance At A Glance: A Monthly Chartbook* (Feb. 2020); See also Urban Institute, *Housing Finance At A Glance: A Monthly Chartbook* (Jan. 2022).
[8] FHFA, *House Price Index* (Accessed June 2022); *see also* U.S. Census Bureau, *Homeownership in the United States: 2005 to 2019* (Mar. 2021).
[9] FHFA, *House Price Index* (Accessed June 2022).
[10] Redfin, *Housing Market Update: Half of Homes Are Now Selling Above List Price* (May 21, 2021); *See also* Redfin, *Nearly 6,000 U.S. Homes Have Sold For $100,000+ Above Asking Price This Year* (Mar. 8, 2022).
[11] Washington Post, *Competitive home buyers waive contingencies to score homes in tight market* (Jun. 3, 2021).
[12] FHFA, *2021 Report to Congress* (Jun. 15, 2022).
[13] CARES Act, Pub. L. No. 116-136 (2020), e.g. § 4022(b)(1).
[14] Congressional Research Service, *Housing Issues in the 117th Congress* (Apr. 15, 2022).
[15] *Id.*
[16] Consumer Financial Protection Bureau, *Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures ACT (RESPA), Regulation X* (Jun. 28, 2022).
[17] FHFA, *FHFA Protects Borrowers After COVID-19 Foreclosure and Eviction Moratoriums End* (Jun. 29, 2021).
[18] American Rescue Plan Act, Pub. L. No. 117-2 (2021).
[19] FHFA, *Foreclosure Suspension for Borrowers Applying for Relief through the Homeowner Assistance Fund* (Apr. 6, 2022).

with federally-backed mortgages, including those purchased by the Enterprises, may continue to request mortgage forbearance for pandemic-related hardship, as authorized under the CARES Act.[20]

Capital Rule

On June 30, 2020, under former Director Calabria, FHFA published a notice of proposed rulemaking (NPRM) regarding the Enterprises' capital framework to significantly increase the capital that the Enterprises are required to hold in reserves.[21] The proposed rule aligned with plans laid out by the Trump Administration to recapitalize and release the Enterprises from government conservatorship.[22] Former Director Calabria's proposed rule would have required $250 billion in capital—thirteen times more than what would be necessary to respond to the most realistic downturn scenario, and six times more than FHFA's projected worst-case stress tests.[23] Meanwhile, this increased capital requirement was projected to increase the Enterprises' guarantee fees by 15 to 20 basis points, which would have meant more costly lending due to increased upfront and ongoing costs that could especially disadvantage borrowers of color.[24] In September 2021, Director Thompson issued a new proposed rule to provide more appropriately tailored capital requirements, and to remove distorted incentives to buy and hold high levels of risky assets.[25]

Advancing Racial Equity and Addressing the National Housing Crisis

The overall racial homeownership gap has continued to widen over the years, with the Black-White homeownership gap reaching a 120-year high in 2020.[26] Since homeownership is the primary driver of wealth for most American families, this, in turn, widens the racial wealth gap. The Enterprises' business makes up roughly two-thirds of the mortgage lending market; as such, the Enterprises, and FHFA's regulatory oversight of them, can play a significant role in closing the racial wealth and homeownership gaps by promoting affordable and equitable access to homeownership and supporting liquidity for deeply targeted affordable housing development.

The Disparate Impact of Guarantee Fees

Guarantee fees (g-fees) are charged by the Enterprises on loans that they purchase, which include both upfront fees, referred to as Loan Level Price Adjustments (LLPAs) and ongoing fees. LLPAs are typically factored into a borrower's interest rate and are assessed based on various factors, including a borrower's credit profile, product type, and loan features. While these fees are intended to account for credit risk, research has shown that LLPA assessment factors do not accurately account for risk and have a disparate impact on borrowers of color and other protected borrowers under the Fair Housing Act and Equal Credit Opportunity Act.[27] Stakeholders have called on FHFA to eliminate LLPAs as a necessary step to mitigate disparate impact concerns and ensure that the Enterprises are providing equitable and affordable access to credit for all borrowers.[28]

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[20] Consumer Financial Protection Bureau, *Lean about forbearance* (accessed Jul. 13, 2022).
[21] Enterprise Regulatory Capital Framework, 85 Fed. Reg. 39274 (proposed Jun.30, 2020) (to be codified at 12 C.F.R.1206, 1225, 1240, 1750).
[22] House Committee on Financial Services, *The End of Affordable Housing? A Review of the Trump Administration's Plans to Change Housing Finance in America* (Oct. 22, 2019).
[23] National Housing Conference, *Racial justice and the GSE capital rule. Yes, they are related.* (accessed Jul. 12, 2022).
[24] House Committee on Financial Services, *Waters, Clay, and Heck Request Housing Finance Regulator Pause Rulemaking Increasing Capital for Fannie Mae and Freddie Mac* (Jul. 28, 2020).
[25] Joint Center for Housing Studies of Harvard University, *Newly-Proposed Changes to the GSE Capital Rule will Eliminate Harmful Distortions* (Sept. 21, 2021).
[26] CNBC, *Why the homeownership gap between White and Black Americans is larger today than it was over 50 years ago* (Aug. 21, 2020); *See also* NCRC, NCRC 2020 Home Mortgage Report: Examining Shifts During COVID (Jan. 18, 2022).
[27] National Fair Housing Alliance (NFHA), Letter from Civil Rights and Consumer Advocacy Organizations to FHFA Acting Director Sandra L. Thompson, (Sept. 7, 2021).
[28] NFHA, et al., *Comment Letter to FHFA regarding the Policy Statement on Fair Lending* (Sep. 7, 2021); *See also* NFHA, *Request for Input regarding the Draft Strategic Plan for Fiscal Years 2022-2026* (Mar. 11, 2022).

Despite long-standing concerns with LLPAs former FHFA Director Calabria implemented a new LLPA in the form of a 50-basis point (0.5%) adverse market fee on most conventional refinances during the first year of the pandemic.[29] Intended to help recapitalize the Enterprises to eventually release them from government conservatorship,[30] this fee made refinance lending more expensive for homeowners. Indeed, the adverse market fee increased refinancing costs by an estimated $1,400 per refinance mortgage sold to the Enterprises, preventing homeowners from accessing historically low interest rates through mortgage refinancing.[31]

In response to criticism of the adverse market fee and its effects on restricting access to refinance credit, former Director Calabria announced a new refinance option in April 2021 for borrowers with Enterprise-backed mortgages making at or below 80% of the area median income (AMI).[32] While mortgage interest rates remained low at the time of the announcement, the most advantageous rates were no longer available to borrowers who were unable to access affordable refinance options due to the increased costs imposed by the fee.[33] In July 2021, Director Thompson reversed the adverse market fee and, in October 2021, announced the expansion of income eligibility to 100% of AMI for the Enterprises' new refinance options.[34]

Duty to Serve and Affordable Housing Goals

Under HERA, the Enterprises are required to meet certain affordable housing goals and support affordable housing activities, especially in underserved housing markets.[35] Under HERA's Duty to Serve (DTS) rule, the Enterprises are required to serve three specific underserved markets—manufactured housing, affordable housing preservation, and rural housing—by increasing the liquidity of mortgage financing for very low-, low-, and moderate-income families.[36] Under DTS, the Enterprises must prepare three-year underserved market plans for FHFA approval.[37] In May 2021, the Enterprises submitted proposed plans that former Director Calabria rejected for inadequately addressing the needs of each underserved market.[38] In January 2022, FHFA again rejected the Enterprises' DTS plans under Director Thompson for not meeting minimum standards for underserved markets.[39] Director Thompson later approved the Enterprises' revised plans, which FHFA published in April 2022.[40]

Additionally, under HERA, FHFA has are required to establish annual affordable housing goals and benchmarks for the Enterprises to ensure that they promote equitable access to affordable housing through new loan purchases.[41] In December 2021, FHFA issued a final rule regarding the benchmark levels for the Enterprises' single-family and multi-family housing goals for 2022 through 2024.[42] Most notably, the rule incorporated two new single-family purchase subgoals, including in "minority communities" and "low-income neighborhoods."[43] While housing stakeholders have been critical of both

[29] House Committee on Financial Services, *Waters and Clay Slam New Adverse Market Fee That Could Cost Homeowners Thousands of Additional Dollars* (Aug. 14, 2020); *See also* HousingWire, *Lawmakers ask Calabria to rethink adverse-market fee* (Sept. 16, 2020).
[30] HousingWire, *Lawmakers ask Calabria to rethink adverse-market fee* (Sept. 16, 2020).
[31] HousingWire, *This is why lawmakers are calling on Calabria to reconsider the adverse-market fee* (Sep. 17, 2020).
[32] FHFA, *FHFA Announces New Refinance Option for Low-Income Families with Enterprise-Backed Mortgages* (Apr. 28, 2021).
[33] House Committee on Financial Services, Testimony of Nikitra Bailey, *A Review of the State of and Barriers to Minority Homeownership*, 116th Congress (May 8, 2019).
[34] FHFA, *FHFA Eliminates Adverse Market Refinance Fee* (Jul. 16, 2022); *See also* FHFA, *Prepared Remarks of Sandra L. Thompson, Acting Director, FHFA, at the 2021 Mortgage Bankers Association Annual Convention and Expo* (Oct. 18, 2021).
[35] HERA, Pub. L. No. 110-289 (2008).
[36] FHFA, *FHFA Announces Fannie Mae's and Freddie Mac's Duty to Serve Underserved Markets Plans for 2022-2024* (Apr. 27, 2022).
[37] *Id*.
[38] *Id*.
[39] National Apartment Association, *Fannie and Freddie Fall Short of "Duty to Serve," says FHFA* (Feb.2, 2022).
[40] *Supra note 36*.
[41] FHFA, *FHFA Finalizes 2022-2024 Single-Family and 2022 Multifamily Goals for Fannie Mae and Freddie Mac* (Dec. 22, 2021).
[42] *Id*.
[43] *Id*.

the DTS rule and affordable housing goals as not going far enough in pushing the Enterprises to support affordable housing financing and development.[44]

The Housing Trust Fund (HTF) and Capital Magnet Fund (CMF)

Each year, the Enterprises are required to contribute 4.2 basis points per dollar in unpaid principal balance (UPB) on total new business to support the HTF and the CMF, which are programs designed to create, preserve, and rehabilitate affordable housing for the lowest income households in the country, and to promote community development activities.[45] The Enterprises made large profits due to the recent mortgage origination boom, resulting in a record contribution of $1.138 billion to the HTF and CMF. The HTF saw an increase of $29 million in funding between 2021 and 2022 to $740 million.[46] The CMF received a $398 million contribution in 2022, up $15 million from 2021.[47]

Equitable Housing Finance Plans

In June 2022, the Enterprises issued their first-ever Equitable Housing Finance (EHF) plans.[48] The three-year plans (2022-24) establish a flexible framework to address racial inequities in housing and increase access to sustainable homeownership and rental opportunities, with Fannie Mae's plan focusing on Black renters and homeowners and Freddie Mac's plan focusing on Black and Latinx renters and homeowners.[49] The plans lay out a number of planned initiatives related to reducing appraisal disparities, expanding access to credit through additional credit data such as positive rental payment history, which the Enterprises have since both implemented, and special purpose credit programs (SPCPs).[50] SPCPs allow financial institutions to create lending programs that serve protected classes.[51] Federal agencies have released guidance and interagency statements outlining permissible uses and support for of SPCPs under the Equal Credit Opportunity Act and the Fair Housing Act.[52]

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[44] HousingWire, *Affordability goals show FHFA is "new sheriff in town"* (Aug. 19, 2021); *See also* The Underserved Mortgage Markets Coalition, *Letter to Director Thompson* (Oct. 20, 2021).
[45] National Low Income Housing Coalition, *National Housing Trust Fund* (accessed Jul. 13, 2022); U.S. Department of the Treasury Community Development Financial Institutions Fund, *Capital Magnet Fund* (accessed Jul. 13, 2022).
[46] *Id*.
[47] *Id*.
[48] FHFA, *FHFA Announces Equitable Housing Finance Plans for Fannie Mae and Freddie Mac* (Jun. 8, 2022).
[49] Fannie Mae, *Equitable Housing Finance Plan, 2022-24* (2022); Freddie Mac, *Equitable Housing Finance Plan, 2022-24* (Jun. 2022).
[50] *Id*.
[51] Consumer Financial Protection Bureau, *Using special purpose credit programs to serve unmet credit needs* (Feb. 22, 2022).
[52] *Id*; *See also* HUD, *Office of General Counsel Guidance on the Fair Housing Act's Treatment of Certain Special Purpose Credit Programs That Are Designed and Implemented in Compliance with the Equal Credit Opportunity Act and Regulation B* (Dec. 6, 2021); *See also* Office of the Comptroller of the Currency, *Fair Lending: Interagency Statement on Special Purpose Credit Programs* (Feb. 22, 2022).

Appendix: Legislation

- **H.R. 4495, the "Downpayment Toward Equity Act," (Waters)** is a bill that would authorize $100 billion for a new HUD grant program to provide financial assistance to first-time, first-generation homebuyers to put towards a downpayment and other upfront costs to purchase a home. This funding would help address multigenerational inequities in access to homeownership and help close the racial wealth and homeownership gaps in the United States.
- **Title IV of H.R. 5376, the "Build Back Better Act," (Yarmuth)** is a bill that would, among other things, provide over $150 billion in fair and affordable housing investments to build, rehabilitate, and retrofit over one million homes, reduce the cost of housing, address homelessness, and increase access to homeownership.
- **H.R. 3323, the "Federal Home Loan Banks' Mission Implementation Act," (Torres)** is a bill that would expand the ability of Federal Home Loan Banks (FHLBs) to provide advances and grants for activities related to small businesses, affordable housing, and community development.
- **H.R. ___** is a discussion draft that would amend the Federal Home Loan Bank Act to require the election committee to consider at least one candidate that represents gender diversity; and one candidate that represents racial and/or ethnic diversity when electing candidates to the board of directors of the bank.
- **H.R. ___, the "Fair Appraisal and Inequity Reform (FAIR) Act of 2022," (Waters)** is a discussion draft that would establish a new Federal Appraisal Regulatory Agency, a streamlined federal process for reporting appraisal discrimination and appraiser misconduct complaints, require annual reporting of such complaints to Congress, enhance statutory penalties for appraisal discrimination, among other critical actions to address ongoing systemic and overt discrimination in the home valuation industry.
- **H.R. ___** is a discussion draft to require FHFA to conduct a review of single-family housing mortgage purchase polices, practices, and products of the Enterprises to identify barriers to supporting mortgage financing for small dollar mortgages with a principal balance at or below $100,000.
- **H.R. ___, "Improving Prudential Standards for Nonbank Mortgage Servicers Act,"** is a discussion draft that would give authority to the FHFA to establish minimum federal standards for the net worth, capital, liquidity, and other prudential standards for non-bank mortgage servicers.
- **H.R. ___, "Advancing Accountability and Transparency in Federal Home Lending Act,"** is a discussion draft that amends the Housing and Community Development Act of 1992 to enhance the reporting on minority and women inclusion at FHFA regulated entities.