

MEMORANDUM

To: Members of the Committee on Financial Services

From: Committee Staff

Date: September 23, 2024

Subject: September 26, 2024, Housing and Insurance Subcommittee hearing entitled, “Vanishing Independence: How FHFA’s Political Agenda Endangers Homeowners and Taxpayers”

On Thursday, September 26, 2024, at 10:00 am, in room 2128 of the Rayburn House Office Building, the Subcommittee on Housing and Insurance of the Committee on Financial Services will hold a hearing titled, “Vanishing Independence: How FHFA’s Political Agenda Endangers Homeowners and Taxpayers.” Testifying at the hearing will be:

- **The Honorable Mark A. Calabria**, Senior Advisor, the Cato Institute
- **Mr. Matt Benedict**, President and CEO, Midstate Mutual Insurance Company
- **Mr. Richard H. Welshons**, Twin Cities Manager, The Title Team and DCA Title, and American Land Title Association President-Elect
- **Mr. Keith Epstein**, Community Banker and CEO, Roxboro Savings Bank
- **Ms. Lisa Carmel Rice**, President and CEO, National Fair Housing Alliance

Background

The Federal Housing Finance Agency (FHFA) is “*an independent agency of the Federal Government*” responsible for overseeing the housing Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, as well as the Federal Home Loan Banks (FHLBs).¹ FHFA is headed by a single Director appointed by the President and confirmed by the Senate to a five-year term. The current FHFA Director is the Honorable Sandra Thompson, who was sworn in on June 22, 2022. Director Thompson last testified before the Committee on May 23, 2023, but has not yet been available to testify in 2024.

FHFA’s primary statutory mission is to regulate the GSEs, which are private corporations chartered by the federal government with special benefits to help make homeownership more available and affordable for lower- and middle-income Americans. In addition to being their regulator, FHFA also serves as conservator for each GSE, a role it has played since their respective financial collapses in September 2008. This dual role requires FHFA to balance competing priorities in accomplishing its mission. As a regulator, FHFA is charged with ensuring that “*each regulated entity operates in a safe and sound manner.*”² As a conservator, FHFA has the statutory authority to take action that it determines to be “*...necessary to put the regulated entity in a sound and solvent condition...*” and “*...appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity.*”³

¹ 12 U.S.C. 4511(a)

² 12 U.S.C. 4513(a)(1)(B)(i)

³ 12 U.S.C. 4617(b)(2)(D)

Essential to maintaining that balance is FHFA's status as an independent agency. This statutory status means that the FHFA Director is the sole authority on making agency decisions and complying with all applicable federal statutes, free from direct presidential control or other executive branch interference. Without FHFA's independent status, the more-than-half of the \$13 trillion U.S. mortgage market that the GSEs currently own or guarantee could be subject to wild fluctuations in regulation or political interference. Hence, FHFA independence is critical to the strength and integrity of the U.S. housing finance system. The erosion of this independence would not only impact the operational safety and soundness of the GSEs, but also negatively impact the availability of and access to mortgage credit for millions of Americans.

FHFA's Shift from Safety and Soundness

Since her term began in 2022, Director Thompson has pushed FHFA to be very active on a number of regulatory fronts both as the regulator and conservator of the GSEs. These decisions, both big and small, have accelerated over the last several months, leading many to question the impetus, impact, and timing of these actions. Some of the more notable recent FHFA actions include: selectively applying the statutorily-required Prior Approval for Enterprise Products rule; abandoning the traditional role of title insurance in mortgage transactions; allowing Freddie Mac to, for the first time, purchase certain single-family closed-end second mortgages; creating new replacement cost value insurance mandates on loans purchased by the GSEs; and, issuing a new rule to expand and codify the Equitable Housing Finance Plans for each GSE.

Critics have voiced concerns over these actions as examples of mission creep both at the GSEs, through expanded operations in the primary and secondary markets, and at FHFA, through regulatory overreach and a shift away from safety and soundness. On their own, it is feared each of these efforts could have far-reaching impacts on various aspects of our housing finance system. Taken as a whole, these actions reflect an attempt by Director Thompson to use her broad powers, particularly as conservator, to overhaul the housing finance system without Congressional input. But, in many cases, it remains to be seen how these choices will impact FHFA's safety and soundness mission, and what – if any – statutory justification exists for shifting FHFA's core focus to the Director's more political agenda.

Legislative Proposals

- ***H.R. 6922, the Securing Facilities for Mental Health Services Act*** (Emmer) - This bill would revise the FHA mortgage insurance definition for hospitals to include facilities that specialize in mental health care.
- ***H.R. _____, the Ensuring Access to Whistleblower Protections Act*** (De La Cruz) - This bill would make clear what contract activities mandate the Department of Housing and Urban Development to make best efforts to include in any modification made to a contract into which it has previously entered a clause that provides for the same whistleblower protections that are codified in Section 4712 of Title 41 of the United States Code.