September 5, 2017

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
400 Seventh St., S.W.
Washington, DC 20219

RE: Comments/RIN 2590-AA81, the Proposed Rule on the Enterprises' Housing Goals 2018-2020

Dear Mr. Pollard:

On behalf of the Consumer Federation of America, the National Community Stabilization Trust, and the National Consumer Law Center (on behalf of its low-income clients), we submit this comment on your proposed rule establishing housing goals for Fannie Mae and Freddie Mac for 2018-2020. We appreciate the opportunity for input on this important rulemaking.

Consumer Federation of America (CFA) is a nonprofit association of some 300 national, state, and local pro-consumer organizations created in 1968 to represent the consumer interest through research, advocacy, and education.

The National Community Stabilization Trust (NCST) is a non-profit, non-partisan organization that employs a unique blend of policy expertise and on-the-ground real estate experience to restore vacant and abandoned properties to productive use and to protect neighborhoods from blight. Since its founding in 2008, NCST has helped address the needs of more than 23,000 properties. One of its flagship projects is the Neighborhood Stabilization Initiative, a partnership with Fannie Mae and Freddie Mac.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S., including older adults, through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

This letter will summarize the social and economic context in which we consider the proposed housing goals levels; address the specific questions raised in the request for comment, including the methodology for determining compliance with the goals and substantive changes proposed in administering the goals**;** and offer our perspective on the proposed goals categories and levels.

Background: The Housing Goals in Context

Housing, both rental and homeownership, plays a critical role in family well-being as well as the larger economy. At the macro level, the sector provides millions of jobs through construction and renovation and supports many multipliers through the economy in the form of professional services, furnishings and other ancillary products associated with the real estate and housing sector.

The broad availability of affordable rental and homeownership opportunities is crucial to increasing household opportunity, reducing economic inequality, and furthering racial justice. Homeownership remains the single most important contributor to household wealth among families at every income level, particularly for low- and moderate-income families and African-American and Hispanic families of all income levels. While the rate of homeownership among White households remains above 70 percent, it remains below 50 percent for Black and Hispanic families and has declined significantly as a result of the mortgage crash and Great Recession. For those who cannot or choose not to own a home, affordable and stable rental opportunities are a critical building block for family stability and financial progress.

Currently, Fannie Mae and Freddie Mac remain the largest national source of mortgage capital for both ownership and rental housing. The proposed rule notes that Fannie Mae and Freddie Mac financing accounted for 52 percent of mortgage loans in 2015, a decline from earlier years but still a dominant share. Not only do they provide the majority of the capital for conventional conforming ownership mortgage financing, but their underwriting and credit standards essentially set the rules for what loans will be made and on what terms they will be made for the entire homeownership financing market.

We note that the changes in Fannie's and Freddie's pricing structures that drive their risk pricing are the direct result of FHFA policies regarding capital and risk, both at the companies and for the mortgage insurers who are their most common risk sharing partners for higher risk loans. The continued overlays of loan level pricing adjusters and higher and more stratified MI charges, which are noted in the proposed rule, are key drivers of disappointing Enterprise performance in serving low wealth borrowers and those with less than perfect credit histories. We submit that the Enterprises' performance in serving those targeted by the housing goals regime will be less affected by Enterprise actions or housing goals levels than by FHFA policies.

We also note, as does the proposed rule, that the FHA market share has been growing as the conventional market share has declined in the last few years. An analysis of CoreLogic data provided to CFA by Urban Institute shows that while FHA had only a 25 percent overall share of the non-jumbo owner-occupied purchase money market in 2016 based on dollar value, its share of such loans with LTVs greater than 95 percent but less than 100 percent was 68 percent. An analysis of recent HMDA data by loan count prepared for CFA by Urban Institute shows that in 2013-2015, FHA's share of all first lien purchase money mortgages fluctuated between 19 and 23 percent, but its share of all such loans to LI borrowers was between 31 and 36 percent and for VLI borrowers between 33 and 39 percent.

As the proposed rule notes, shifting the share of conventional Enterprise financed loans to targeted groups will mean a shift out of FHA for many borrowers. While this may increase choice, reduce cost, and improve service for some borrowers, it will not necessarily increase the net amount of mortgage lending to these borrowers. Ideally, FHFA would acknowledge the interactions among different lending channels by analyzing the *entire* market served by federal guarantees and subsidies and assessing the housing goals and its own policies in that context.

Fannie and Freddie play a similar role in the multifamily, rental-housing sector. While they do not drive the market choices and lending decisions of primary market lenders to the extent they do in the single family market, they still set the framework for the broad range of acceptable credit and underwriting practices.

The Charter Acts that established both Fannie Mae and Freddie Mac, as well as the Federal Housing Enterprises Safety and Soundness Act of 1992 and the Housing and Economic Recovery Act of 2008, or HERA, emphasize the central role that Congress intended the Enterprises to play in providing a stable source of responsible housing finance, with a particular emphasis on their obligation to fully serve all markets at all times.

Specifically, their charters require them to "provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage finance."[1]

The Enterprises' placement into conservatorship in 2008 did not reduce or eliminate these responsibilities. If anything, their continued operation under the conservatorship with the taxpayers as their senior shareholders only increases the importance of ensuring that their operations serve the broadest possible range of borrowers through all communities in the country.

Single Family Housing Goals

In spite of these consistent and enduring expectations for Fannie Mae and Freddie Mac, average credit scores remain significantly higher today than during the early 2000s, a period of stable and sustainable mortgage underwriting (also the case at FHA). These trends, and the weaker participation by Fannie and Freddie in the low down payment, lower income space noted earlier, has undermined the Enterprises' traditional post-1992 role in leading expansions of mortgage credit to underserved borrowers.

Much of the inequality in the housing market stems from the broad, negative, economic trends of income and wealth disparities, higher unemployment, and higher student debt, especially among young households and communities of color. However, FHFA and Enterprise policies have exacerbated this inequality. The imposition of loan level pricing adjustments for loans with lower down payments and weaker credit scores, for instance, on top of risk-based pricing by private mortgage insurers, makes loans for these populations more expensive, pushing home buyers in general, and first-time homebuyers and homebuyers of color in particular, out of the conventional market either into loans insured by FHA or out of the homeownership market altogether.

The rising generation of new homebuyers will have a significantly different profile than those that preceded it in the recent past. Well over half of new family formation will be families of color, who will not have access to family wealth for down payments and whose credit scores are impacted by decades of discrimination. To ensure that Fannie and Freddie fulfill their chartered purpose of serving this emerging market, FHFA will have to take aggressive and targeted action.

FHFA should also consider how its policies affect the single-family inventory shortage that exists among lower value homes and in low-income areas. For-sale inventory has fallen by more than 40% since its peak in 2011, and the shortage is by far the most acute for more affordable homes.[2] NCST's Community Buyers (who work almost exclusively in low-income areas) report the lack of affordable inventory is as big a problem as access to credit for their stakeholders; in fact, some have a long backlog of mortgage-qualified clients who are waiting for a home in their price range to hit the MLS.

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[1] 12 U.S. Code § 1716

[2] Zillow Economic Research, "Zillow Housing Market Overview 2017 Q1" available at https://wp.zillowstatic.com/3/Chartbook-2017-Q1-16a5e3.pdf

There are many reasons for the inventory shortage. Fewer new homes are being built, especially smaller and more affordable homes, and owner-occupancy demand is surging as family formation recovers from its recession lows. Many homeowners remain “locked” into their mortgages due to being underwater and cannot move and free up their previous house. Cash investors have flooded many markets, where they can outbid households requiring financing and can often find ways to obtain inventory before it is listed on the MLS. Competition with investors has been exacerbated by the explosive growth of the professionalized single-family rental industry, which the Enterprises are now fueling through their multifamily channels and which we discuss in more detail below.

In weaker markets and many low-income areas, the inventory shortage has additional dimensions. Many homes in these markets require significant rehabilitation to be habitable, yet the cost to acquire and rehabilitate homes for safe and healthy occupancy exceeds the fair market value of the home. While both Fannie Mae and Freddie Mac offer a renovation mortgage, the uptake on these products is exceedingly low, both because few lenders offer them and because the lower-income families most likely to seek housing in these markets lack both the experience and the time to manage the requirements of these complicated mortgages or even the rehab work itself. Yet due to a lack of available financing and subsidy to fill the appraisal gap, neither nonprofits that engage in acquisition and rehab nor even private developers who flip homes find it feasible to purchase these homes. As a result, a good chunk of potential inventory in underserved areas sits empty, continuing to deteriorate.

FHFA Should Retain the Dual Benchmark/Market Approach

FHFA proposes continuing to determine compliance by evaluating whether the Enterprises meet at least one of two standards for the single-family “percent of business” goals. One standard is the “benchmark” set by FHFA through the rulemaking process, which is based on a number of specific criteria and forecasted into the future. The second standard, first adopted in the 2010-2011 rule, compares the Enterprises’ performance against the levels reported in the Home Mortgage Disclosure Act (HMDA) data for the same year. We strongly recommend retaining this dual approach going forward.

If FHFA uses only a benchmark, it can be problematic if the benchmark is too low and therefore eases pressure on the Enterprises to responsibly expand credit and it can also be problematic if the benchmark is too high. Fannie Mae and Freddie Mac depend on the actions of primary market lenders to originate and deliver loans for securitization. Their business flows are influenced by primary market lenders’ business and capital management strategies. Their ability to fine-tune these flows is limited also by the forward nature of their commitments. As the calendar year for which goals are calculated winds down, the ability to influence the mix of business to be delivered through the balance of the year declines quickly as forward commitments are fulfilled.

Further, if market conditions change markedly from what FHFA predicts, the Enterprises’ ability to respond can be very limited. This lack of control over deliveries and their mix during any single year is amplified by the fact that primary market lenders on whom the Enterprises depend do not have similar goals imposed by their own regulators. The Enterprises can offer pricing, marketing and product support incentives to encourage lending that meets the goals. But primary market lenders have little or no special incentive of their own to match the mix of business against which Enterprise performance is measured.

Yet using only a market percentage can be problematic as well, because the intention of the goals is to encourage lending in these areas, and pegging to the market alone undermines the incentive for the

Enterprises to promote products that expand access to the populations targeted by the goals. This market test is especially problematic in the current environment, when Fannie Mae and Freddie Mac underwriting, credit and product standards basically determine what the market is. Determining goals performance based only on the market level therefore threatens to become a circular exercise in which the Enterprises' market dominance determines the primary market's appetite for risk and product mix, driving a result that decreases the opportunity or incentive for innovation and responsible credit expansion.

For these reasons, a dual standard that uses both a benchmark and a market goal makes sense. FHFA should also consider that the annual measurement period can provide a misleading picture of Enterprise performance under any measure because originations and secondary market sales occur throughout the calendar year but not necessarily at the same time, resulting in "lumpiness" that may smooth out over time, but not in synch with the goals period.

Assuming that it retains the dual standard, however, we recommend some ways that FHFA can use the retrospective market information as a tool in setting future goals. For example, if an Enterprise does not meet the benchmark standard and just barely meets the market test, FHFA should redouble its efforts to understand what Enterprise policies are causing the barely acceptable performance.

Similarly, if the Enterprises meet or exceed the benchmark goal but lag the market's performance, this information can help inform the benchmark going forward. This situation arose several times prior to the reforms in HERA. For example, between 2003 and 2005, both Fannie Mae and Freddie Mac's performance on the Low- and Moderate-Income Borrower Goal was consistently above the 50 percent benchmark but below the actual market share, which ranged between 52.9 percent and 57.2 percent.

If the Enterprises fail to meet either the benchmark or the market goal and FHFA determines that the goal or goals were feasible, then FHFA should use its authority to require the filing of a Plan of Action and, if necessary, the further steps provided authorized in HERA. We agree with the proposed rule's observation that the timelines in place under the current rule for remedial action are too long and support administrative changes to streamline them and make responses to failure to meet the goals more timely.

This dual approach provides the FHFA the tools and flexibility to effectively and fairly evaluate the Enterprises' performance relative to the two metrics. It should encourage FHFA to set goals levels that "stretch" the companies to maximize their support for responsible credit for targeted groups while acknowledging that market conditions may hinder their success in any single year as well as over time. It is true that under a benchmark-only approach FHFA could change the goals based on evolving market conditions, either during the year or *post hoc.* However, past experience suggests that this would be hard to execute. The dual approach offers a more reliable means by which to balance the benefits and drawbacks of each of the single approaches. In sum, we support the continued use of a modified dual test in the proposed goals periods.

Most important, we note that the goals are a means to an end, not an end themselves. They are critical to measuring Enterprise performance. But FHFA should focus on the policies, pricing and marketing strategies that the Enterprises adopt to fulfill their mission to fully serve the market. These are more than ever under the direct control of FHFA, and we urge a more comprehensive approach to this set of issues so that the goals levels are consistent with and related to the pricing policies and practices approved by FHFA. The goals will measure the success of these efforts. Their best result will be robust programs and policies that drive more participation in the targeted markets.

FHFA should set a benchmark higher than 24 percent for low-income home-purchase lending.

FHFA projects a confidence interval of between 5 and 7 percent for its market estimates. Given the dual test proposed in the rule and the need to put pressure on the Enterprises and FHFA to support more goals-targeted borrowers, we support a higher goal level than one that hovers at the lowest point of the market estimates.

In addition, since other data strongly indicate that lower-income and minority borrowers and communities are having a great deal of trouble accessing conventional, conforming mortgage credit, we strongly suggest that FHFA set more aggressive rather than less aggressive benchmarks for all the goals categories. Below, we explain how retrospective market data can be used to mitigate risk that this or other benchmarks are set too high.

FHFA should improve its targeting of loans counting toward the low-income areas goal.

In the rule, FHFA notes its concern that the Enterprises are satisfying their low-income areas goals with loans primarily made to higher-income households who live in those areas. One of the reasons for this result is that some segments of those areas are quickly gentrifying. Providing goals credit for loans made to high-income families moving into low-income areas not only fails to achieve the results intended by these goals, but may in fact perversely contribute to pushing out lower-income families. For this reason, FHFA should consider whether to establish bonus credit for loans purchased from areas that continue to suffer from disinvestment rather than those that are gentrifying. Metrics to distinguish among areas could consider home price recovery, whether the area was a market that was continuing to decline since the Great Recession or was newly declining, and how many mortgages in the area continued to be underwater, among other factors.[3]

Additionally, the mis-targeting of households in low-income areas is not only a problem of income level, but also of race. A study by Michela Zonta of the Center for American Progress shows that the purchases not only disproportionately consist of loans to higher-income households, but also of loans to white and Asian rather than African American and Latino households.[4] Zonta concludes, "[B]asing the designation of underserved markets solely on economic factors may lead the GSEs to miss an important segment of the underserved market that has been historically excluded from broad access to mortgage credit."[5] FHFA should consider how the goals regime could become race-conscious in a way that does not

[3] For two typologies of different markets, see a series of slides from CoreLogic on metro recovery entitled, "The Good, the Boom/Bust and the Ugly," available at http://www.urban.org/sites/default/files/presentation_slides_-_are_we_serving_the_underserved.pptx.pdf [slides 13-15] and a report from the Center for American Progress entitled, "The Uneven Housing Market" that provides a nuanced typology of different markets, available at https://www.americanprogress.org/issues/economy/reports/2015/11/02/123537/the-uneven-housing-recovery/.
[4] Michela Zonta, "Do the GSEs Meet the Credit Needs of Underserved Communities of Color?" in Cityscape: A Journal of Policy Development and Research (Volume 17, Number 3, 2015), available at https://www.huduser.gov/portal/periodicals/cityscpe/vol17num3/ch11.pdf
[5] Id. at 213.

establish quotas but recognizes that focusing only on economic issues may miss not only policies that result in a disparate impact, but also outright discrimination in the primary market.**Multifamily Goals**

FHFA should strengthen its overall multifamily goals

Strong multifamily goals will push the Enterprises to innovate responsibly in serving affordable multifamily properties, a market segment whose supply falls significantly short of demand and that would greatly benefit from increased Enterprise support. However, we fear FHFA's proposed multifamily goals are too conservative. The Enterprises have consistently exceeded their multifamily goals in recent years, sometimes dramatically. We support the increase proposed in the proposed rule and recommend close oversight to make sure these goals do not undercut the opportunities for Fannie Mae and Freddie Mac to expand these markets.

To help the Enterprises meet these goals, FHFA should help them identify gaps in the multifamily market and encourage them to serve these segments. For example, there may be room to innovate in supporting the construction of affordable multifamily properties through forward commitment loans or in supporting substantial rehabilitations of existing affordable housing. FHFA can also encourage the Enterprises to become more flexible when working with mission-driven developers who are focused on affordable rental housing. This effort should include revisiting pre-conservatorship initiatives, such as those that provided lines of credit to high-quality mission-based entities who built or preserved affordable housing.

Additionally, we recommend that FHFA consider providing a "bonus credit" to encourage the Enterprises to finance affordable multifamily rental properties outside of areas with high concentrations of minorities and low-income residents. There is a growing body of evidence that housing located in communities with better schools, transportation and employment potential can lead to significant improvements in resident outcomes.[6] Offering to allow the Enterprises to count every unit of such otherwise qualifying affordable multifamily rental housing that is located in such areas as 1.25 units or some other appropriate multiplier will provide an incentive for them to seek out lenders working in these areas and to develop outreach and product features that increase liquidity for them. A similar approach was adopted in the rules establishing housing goals during the 2001-2003 period when small multifamily properties received a similar bonus score. A 2006 analysis of this bonus regime, which applied separately to small multifamily units and single family 2-4 unit rental properties, concluded that when combined with high goals targets, the incentives did increase the Enterprises' participation in the targeted markets.[7]

[6] See the body of research compiled by "The Equality of Opportunity Project" available at http://www.equality-of-opportunity.org/documents/.

[7] Paul B. Manchester, "Effectiveness of HUD's Housing Goals Incentives for Fannie Mae and Freddie Mac: Small Multifamily and Certain Single-Family Rental Properties," presented at Mid-Year AREUEA Conference, Washington DC, May 30, 2006, available at https://www.huduser.gov/Publications/PDF/AREUEA_Presentation.pdf.

FHFA should increase small multifamily subgoals

The small multifamily market is a critical source of affordable housing, especially in rural and smaller metropolitan areas, but it is well known to be difficult for small multifamily properties to access affordable, fixed-rate financing, likely due to a lack of standardized lending products, a more disparate range of borrowers, and relatively fixed origination costs despite smaller loan sizes and origination fees. FHFA's subgoals will encourage the Enterprises to continue to innovate in their service of small multifamily properties. As the Enterprises' approaches to the small multifamily market evolve, it will be important for FHFA to monitor the effectiveness and risk of Enterprise efforts. Given the margins by which both Fannie and Freddie exceeded the current goal, we urge FHFA to consider increasing it for the pending goals period.

FHFA should develop an approach to single family rental as part of its rule

Finally, NCST recommends that as part of its multifamily goals regime, FHFA develop an approach to single-family rental. Despite the smaller amount of attention such properties receive, more than half of all households that rent do so in 1-4-unit properties, which are defined by the Enterprises as single-family properties.[8] Single-family rental units also make up the bulk of the stock affordable to the lowest-income Americans, accounting for three-quarters of unassisted units renting for less than $400 and nearly 60 percent of unassisted units renting for $400-599.[9]

The Enterprises have always played a role in single-family rental by financing 2-4 unit properties owned by an owner-occupant. This past year, the Enterprises jumped headfirst into financing larger investors in the single-family rental market. Fannie Mae engaged in a billion-dollar pilot transaction comprising a large portfolio of single-family rental homes, the vast majority of which are not affordable to families at 60 percent or even 80 percent AMI or below, and Freddie Mac proposes to engage in investor-oriented single-family rental transactions later this year.

We recommend that FHFA establish bonus credit for *owner-occupied* 2-4-unit properties when the owner has participated in a certified counseling program that includes landlord training. When properly underwritten, these properties can provide a significant opportunity for wealth-building by the owner and for affordable rental by the tenants. Specifically, we recommend FHFA consider allowing the Enterprises to count the units financed by such loans to a goals-eligible borrower at a rate of 1.25 or other reasonable multiplier, rather than 1.0.

Also, while our organizations have significant concerns about the Enterprises financing investors in the single-family rental market, if this financing becomes more firmly established as part of the Enterprise multifamily channel, it is critical that FHFA develop a goal that addresses affordability in this context.

Conclusion

First established in 1992, the Enterprise housing goals measure Fannie Mae's and Freddie Mac's success at meeting the requirements of their charters. They also encourage the Enterprises to develop and market products that enable the primary market to better serve underserved borrowers and communities. In 2008, HERA further broadened FHFA's mandate in this area by establishing and

[8] Harvard Joint Center on Housing Studies, "America's Rental Housing: Rental Housing Supply," (2013).
[9] Harvard Joint Center on Housing Studies, "America's Rental Housing: Rental Housing Stock," (2011).

providing initial guidance on the Enterprises' "duty to serve." Taken together, these mandates demonstrate Congress's intent that Fannie and Freddie be held to a high standard of performance in providing mortgage credit in both the rental and homeownership sectors. The goals are also meant to ensure that the Enterprises' policies do not constrict liquidity for safe and responsible products offered in the primary marketplace.

The theme running throughout our specific comments is that this year's goals rulemaking should set key priorities for the Enterprises; establish clear and reasonable standards against which they will be held accountable; and encourage the broadest availability of responsible and sustainable credit possible. Along with overseeing the Enterprises' first Duty to Serve plans, FHFA should be able during this goals period to more comprehensively measure Enterprise performance against the charters' and HERA's expectations of broad market service.

The goals and other policy issues take on even greater importance because of the Enterprises' dominance in the conventional mortgage market. While the housing goals are a means to incent more responsible innovation by holding Fannie Mae and Freddie Mac to a high standard, the market's own performance will be driven to a large degree by the Enterprises' own appetite for more expansive lending. This circular relationship makes the process of setting the housing goals for 2015-17 critically important. Setting high goals along with adjusting pricing structure and increased efforts to introduce new products and serve new market segments ultimately should increase conventional lending to underserved households and geographies.

Thank you for the opportunity to comment on this important rulemaking.

Sincerely,

Barry Zigas, Director of Housing Policy
Consumer Federation of America

Julia Gordon, Executive Vice President
National Community Stabilization Trust

Alys Cohen, Staff Attorney
National Consumer Law Center