

United States Senate

WASHINGTON, DC 20510

July 19, 2022

The Honorable Sandra Thompson
Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20024

Dear Director Thompson:

We write to convey our many significant concerns with the Equitable Housing Finance Plans announced on June 8, 2022 that were developed by Fannie Mae and Freddie Mac (the GSEs) at the direction of the Federal Housing Finance Agency (FHFA). These plans contemplate race-based housing subsidies that, according to FHFA, “will meaningfully address the racial and ethnic disparities in homeownership and wealth that have persisted for generations.” Freddie Mac may decide to make these subsidies “accessible to anyone who self-identifies as Black, Latino or American Indian/Native American.” Fannie Mae, on the other hand, contemplates that “[t]he initial focus . . . will be on the needs of Black homeowners and renters.”

The administration’s proposal seems intent on repeating the mistakes of the recent past. It is worth recalling the GSEs’ central role in the 2008 financial crisis. In the lead up to that crisis, the GSEs were encouraged by their regulators to acquire more and more risky mortgages with an aim to increase homeownership rates. The GSEs were able to finance their rapid growth in part due to the market’s perception that the federal government would not permit a GSE to fail. This perception of an implicit guarantee kept the GSEs’ borrowing costs low despite their aggressive risk taking. Subsidized risk taking helped homeowners take on more taxpayer-subsidized mortgage debt. While this scheme to subsidize excessive risk taking led to huge profits for GSE shareholders, it left behind massive damage for the taxpayers and homeowners. The lasting legacy was the GSEs’ eventual insolvency, their \$190 billion in taxpayer bailouts, and a wave of foreclosures that wiped out millions of homeowners, hurting many minority families that were beginning to accrue generational wealth.

Against this backdrop, we urge FHFA to reconsider these affirmative action housing subsidy plans for the following reasons:

First, the plans are manifestly unfair and should be unconstitutional. Discrimination on the basis of skin color is simply wrong. That remains true even when intended to benefit minorities.

Second, the plans risk setting up another generation of minority borrowers for failure. Black and other minority homeowners lost significant wealth as a direct result of lax underwriting by the GSEs before the crisis. These plans would yet again relax underwriting by, for example, lowering down payment requirements for more borrowers and testing unspecified and not-necessarily predictive “expanded credit criteria.” After the last few years of very significant house price appreciation, plans that push minority and low-income families into highly-leveraged

home purchases are concerning and seem to blatantly ignore the lessons of the last housing crisis. As housing markets are cyclical, it is a question of when, not if, the next downturn begins.

Third, the plans raise significant legal concerns. By statute, FHFA's mandate as conservator is to conserve and preserve each GSE's assets and restore it to a sound and solvent condition. No law authorizes FHFA to use a GSE's assets to pursue affirmative action in housing. Moreover, the use of taxpayer funds to provide race-based subsidies poses grave questions under the Equal Protection Clause. These constitutional defects cannot be sidestepped if geographic or other proxies are used to focus subsidies on minority borrowers, as the plans themselves state a clear discriminatory intent.

Fourth, the plans are a return to GSE mission creep. The GSEs' charters limit them to supporting the secondary market. These plans, however, contemplate that the GSEs would push into the title insurance market (through bulk purchases and attorney opinion letters), the appraisal market (through new valuation options), and even the lending market (through GSE-funded down payment assistance). Primary market participants should be concerned about the GSEs seeking to return to their pre-crisis endeavors at evolving into full-service mortgage companies.

Finally, the plans needlessly politicize the GSEs. The administration is conscripting the GSEs as instrumentalities of its progressive racial equity agenda to achieve outcomes it cannot achieve legislatively or even legally. The resulting expenditures of taxpayer funds will occur without congressional approval or oversight, and we are particularly concerned that the nonprofit and other GSE partners in implementing these plans will misuse these funds on lobbying, other political activities, or advancing liberal priorities. If the GSEs' 13-year-old conservatorships do not come to an end, future administrations will also succumb to the temptation to use the GSEs and their \$7 trillion balance sheets as slush funds to finance policies that otherwise lack congressional authorization or appropriations.

Given these concerns, and in anticipation of litigation challenging the legality of these plans, we ask each GSE to retain all correspondence with FHFA and other records relating to these plans. In the meantime, we urge FHFA to abandon these plans and re-focus on the safety and soundness of the GSEs.


Sincerely,



Thom Tillis
United States Senator



Pat Toomey
United States Senator



Richard Shelby
United States Senator



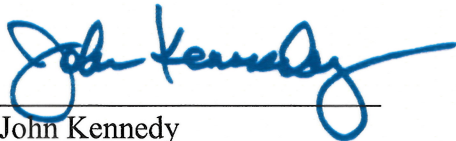
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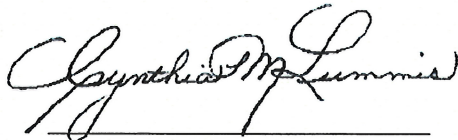
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United States Senator



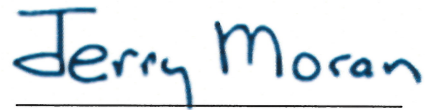
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