NATIONAL FAIR HOUSING ALLIANCE

April 19, 2021

Director Mark A. Calabria
Federal Housing Finance Agency
Constitution Center
400 Seventh Street, SW
Washington, DC 20219

Submitted electronically at:
https://www.fhfa.gov/AboutUs/Contact/Pages/Request-for-Information-Form.aspx

Re: *Request for Information on Climate and Natural Disaster Risk Management at The Regulated Entities*

Dear Director Calabria,

Thank you for the opportunity to submit comments in response to the Federal Housing Finance Agency's ("FHFA") Request for Input ("RFI") on Climate and Natural Disaster Risk Management at The Regulated Entities.[1]

Founded in 1988, the National Fair Housing Alliance ("NFHA") is a consortium of more than 200 private, non-profit fair housing organizations, and state and local civil rights agencies, from throughout the United States. Headquartered in Washington, D.C., NFHA's comprehensive education, advocacy, community development, member services, consulting services, research, and enforcement programs help provide and ensure fair access to housing and financial services. NFHA's track record demonstrates that fair housing and fair lending laws can make a tremendous difference in the lives of millions of people throughout the country.

Still, much work has yet to be done to make credit markets equitable for everyone and FHFA plays a critically important role in ensuring that mortgage markets are fair and free from discrimination. NFHA believes the responses below will help inform FHFA's work and positions.

SUMMARY OF RECOMMENDATIONS

In the RFI, FHFA states that it seeks input to achieve two broad aims:

- To strengthen FHFA's ability to assess the regulated entities' current and future climate and natural disaster risk; and
- To enhance FHFA's supervision and regulation of each regulated entity's management of climate and natural disaster risks.[2]

[1] FHFA, *Climate and Natural Disaster Risk Management at the Regulated Entities* (Jan. 2021) (hereinafter, the "RFI").
[2] RFI at 4.

As FHFA undertakes this important challenge, NFHA recommends that it keep the following principles in mind:

- ***Transparency***: As FHFA develops its understanding of the issues and proposed responses, it should be fully transparent with the public. FHFA should strive to share the data, models, decisions, and proposed solutions so that all of the key stakeholders can stay apprised of the potential impact on the national housing finance market and FHFA's decision-making process.

- ***Engagement***: Relatedly, FHFA should stay engaged with a diverse group of key stakeholders, including civil rights and housing advocates, in order to receive real-time input and feedback on these critically-important decisions.

- ***Equity***: FHFA should keep equity top of mind throughout this process. Proposed solutions to climate and natural disaster risk are likely to have significant repercussions for borrowers and communities of color as well as other vulnerable communities, such as individuals with disabilities, families, and Limited English Proficient borrowers. We strongly urge FHFA to regularly engage with these communities and seek solutions that treat all borrowers and communities equitably.

More specifically, NFHA's recommendations focus on FHFA's responsibility to ensure that climate and natural disaster risk analysis works hand in hand with fair lending risk analysis, and that efforts to address climate and natural disaster risk do not undermine efforts to promote fair lending. In particular, any new initiatives intended to address climate and natural disaster risk should be thoroughly reviewed for fair lending risk to avoid the potential for any illegal discriminatory treatment or effect for communities of color and other underserved communities. In summary, NFHA provides the following four recommendations:

A. ***Risk to GSE Mission: FHFA should recognize that failure to adequately address climate and natural disaster risks could impede the GSEs' ability to provide liquidity for the whole of the national housing finance market, including communities of color and other protected classes.***

B. FHFA Supervisory Framework: FHFA must ensure that climate and natural disaster risk mitigation initiatives avoid discriminatory outcomes as well as promote equitable treatment of borrowers and communities of color.

C. FHFA Research: FHFA should consult with key stakeholders (including civil rights and housing advocates); develop a research agenda; conduct robust research on the intersection between climate and natural disaster risk, mitigation strategies, and communities of color and other protected classes; and make its findings public in a timely manner.

D. Partner Organizations: FHFA should coordinate with key stakeholders (including other government agencies, civil rights groups, and housing advocates) to better

NFHA NATIONAL FAIR HOUSING ALLIANCE

understand climate and natural disaster risk and the impact on communities of color and other protected classes.

DETAILED RECOMMENDATIONS

A. <u>Risk to the GSE Mission</u>: FHFA should recognize that failure to adequately address climate and natural disaster risks could impede the GSEs' ability to provide liquidity for the whole of the national housing finance market, including communities of color and other protected classes.

Responsive to the following RFI questions:

2. What are the climate and natural disaster risks to the regulated entities, including long- and short-term risks, and how might such risks change over time? To what extent, if any, could such risks now or in the future impede the ability of each regulated entity to operate in a safe and sound manner, fulfill its statutory mission, or foster liquid, efficient, competitive, and resilient national housing finance markets?

6. With respect to the foregoing questions, FHFA invites interested parties to submit any studies, research, data, or other qualitative or quantitative information that supports a commenter's response or is otherwise relevant to the regulated entities' climate and natural disaster risk

15. How might the regulated entities support their housing finance missions while minimizing the impact of climate and natural disaster risk?

18. Policies to manage climate and natural disaster risk could increase the cost of housing, making it more difficult for lower income households in some areas to obtain affordable housing. Are there policies the regulated entities could pursue to mitigate such adverse effects for lower income households in vulnerable areas without undermining efforts to manage climate and natural disaster risk?

19. Minority borrowers exhibit higher rates of delinquencies for longer durations following natural disasters. Are there policies the regulated entities could pursue to mitigate such adverse effects for minority borrowers exposed to climate and natural disaster risk?

FHFA should recognize that failure to adequately address climate and natural disaster risks could impede the GSEs' ability to provide liquidity for the whole of the national housing finance market, including communities of color and other protected classes. Consistent with the statutory mission of the GSEs, one of FHFA's principal duties is to ensure that "the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets (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)."[3] In October 2020, FHFA issued its *Strategic Plan: Fiscal Years 2021-2024* ("Strategic Plan"), which emphasized the mandate to serve the whole of the market by stating: "Achieving a liquid, resilient housing finance market throughout the country also requires improved access to responsible mortgage credit across different market segments of creditworthy borrowers."[4]

Although one approach to mitigating climate and natural disaster risk would be to raise prices for loans secured by collateral in high-risk areas, FHFA must consider how such an approach might make it more difficult for residents in communities of color to obtain affordable mortgages. Indeed, such an approach may result in a government approach reminiscent of the old patterns of redlining, which restricted access to mortgage insurance and credit on the basis of race and national origin.[5] As discussed below, people of color often reside in areas that are at higher risk for flooding and other extreme weather conditions. Moreover, raising the cost of mortgage credit might hit communities of color the hardest just as they are trying to recover from this devasting pandemic, the Great Recession, discriminatory environmental burdens, and the persistent homeownership and wealth gap.

FHFA should be wary of unreliable models and solutions that may attempt to quantify risk on a house-by-house basis, but that may, in fact, end up unfairly burdening communities of color. That is, another downside of "risk-based" pricing is that it may be very difficult to predict where the risk will occur. For example, some models are based on outdated maps or boundaries that no longer reflect the true extent of risk in any given area. Moreover, there are many different types of disasters and climate impacts: hurricanes, tornadoes, ice storms, sea level rise, flooding, excessive heat, drought and wildfires, among others. At this point, no part of the country is immune from exposure to climate or natural disaster risk of some sort. Although we still have much to learn about the ways that climate change will affect individual housing markets and the dynamics of the mortgage market overall, our risk management solutions should acknowledge that broad exposure and not seek to impose the burden of shouldering that risk on individual borrowers or communities, particularly communities of color. Given that the risk is broad and that the GSEs' portfolios are equally large (representing half of the mortgage market in this country), it makes sense to spread the risk over the entire market, minimizing the burden on any single person or place.

[3] 12 U.S.C. 4513 (a)(1)(B). *See also* Fannie Mae Charter, 12 U.S.C. 1716(3); Freddie Mac Charter, 12 U.S.C. 1452 (Statement of Purpose). Although communities of color do not necessarily consistent of low- and moderate-income families, there can be overlap between these communities.

[4] FHFA's *Strategic Plan: Fiscal Years 2021-2024* can be found here.

[5] *See* Lisa Rice, *The Fair Housing Act; A Tool for Expanding Access to Quality Credit,* THE FIGHT FOR FAIR HOUSING: CAUSES, CONSEQUENCES, AND FUTURE IMPLICATIONS OF THE 1968 FEDERAL FAIR HOUSING ACT (1st ed. 2017) (explaining how federal race-based housing and credit policies promoted inequality). *See also* University of Richmond, Virginia Tech, University of Maryland, *Mapping Inequality: Redlining in New Deal America* (providing the maps and surveys that document the Home Owners' Loan Corporation discriminatory policies that "redlined" communities of color and served as the basis for restricting access to mortgage insurance and loans on the basis of race and national origin).

Recent news articles and research have highlighted how climate and natural disaster risk often disproportionately impacts communities of color, which may have implications for potential solutions and the GSEs' mission to serve the whole of national housing finance market:

- A series of articles in *Politico* have described the intersection of climate and natural disaster risk, price-based mitigation strategies, and communities of color. For example, one article stated that "pricing climate change into mortgage terms would wreak havoc in the real estate market — a hit that, while protective of taxpayers in the long run, runs counter to the missions of the relevant agencies. Turning off the mortgage spigot in communities affected by climate change would disproportionately affect people of color, whose neighborhoods are more likely to be plagued by violent weather."[6]

- Another *Politico* article highlighted the climate and natural disaster risks for communities of color, compounded by lack of infrastructure investment.[7] Eric Tate, Associate Professor of Geographical and Sustainability Sciences at the University of Iowa, found that Black and Native American communities were more likely to experience flooding and have greater difficulty recovering from it than other groups. Professor Tate stated that he hoped his work would shift investments for flood control infrastructure to vulnerable areas, rather than relying on a cost-benefit analysis that tends to discourage projects in poorer communities, which have lower-value assets.

- An article by the Bloomberg CityLab highlighted the nexus between climate and natural disaster risk, historical patterns of redlining, and decades of disinvestment.[8] The article explained how maps of historic housing discrimination demonstrate that communities of color that suffered redlining in the 1930s face a far higher risk of flooding today. According to recent data, 8.4% of homes in historically redlined communities face high flood risk compared with 6.9% of homes in non-redlined communities. The articles states that the pattern reflects disparities in development compounded by decades of disinvestment.

- A recent article by the Sierra Club described the nexus between redlining and energy insecurity, noting: "The United States' long, shameful history of discriminatory housing policies and racial segregation is part of the reason why Black families are more likely to live in older, energy-inefficient homes that saddle them with higher energy burdens (6 percent energy burden or higher) than white families at almost every position in the income distribution."[9]

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[6] Zack Colman, *How Climate Change Could Spark the Next Home Mortgage Disaster,* Politico (Nov. 30, 2020). *See also* Zack Colman and Katie O'Donnell, *Borrowed Time: Climate Change Threatens U.S. Mortgage Market* (June 8, 2020).
[7] Zack Colman, *Fannie, Freddie Take a Close Look at Mortgage Risks as Climate Events Multiply*, Politico (Oct. 15, 2020);
[8] Kriston Capps and Christopher Cannon, *Redlined, Now Flooding*, Bloomberg CityLab (March 15, 2021). The Bloomberg article is based, in part, on research by Redfin: Lily Katz, *A Racist Past, A Flooded Future*, Redfin (March 17, 2021).
[9] Sharonda Williams-Tack, *From Redlining to Restorative Justice: Anti-Black Racism and Energy Insecurity Go Hand in Hand in America*, Sierra Club (Feb. 21, 2021).

- A recent blog post by the Urban Institute argued that climate change and the affordable housing crisis are inextricably linked and reflect historical practices of segregation based on race and class.[10] The blog post featured an interview with Dana Bourland, author of *Gray to Green Communities: A Call to Action on the Housing and Climate Crisis*. Ms. Bourland stated: "The climate crisis is a stark reminder that people and the planet have limits. [Communities] are tired of being squeezed, left out, unseen, and extracted from to build wealth for an ever shrinking few….The federal government needs to make a national commitment not only to addressing climate change but also to meeting the housing need in this country."

- Another blog post by the Urban Institute[11] highlighted the future of environmental justice research:
    - Lala Ma, Assistant Professor at the University of Kentucky's Gatton College of Business and Economics, stressed that to isolate the causes of inequitable environmental effects, researchers need to focus on the policies that perpetuated these outcomes, such as historical redlining.
    - Manuel Pastor, Professor of Sociology and American Studies and Ethnicity at the University of Southern California, emphasized that researchers "need to shake off the equality mindset and begin to think equitably to account for where people already are and correct for past patterns of disparity."

B. <u>FHFA Supervisory Framework</u>: FHFA must ensure that climate and natural disaster risk mitigation initiatives avoid discriminatory outcomes as well as promote equitable treatment of borrowers and communities of color.

Responsive to the following RFI questions:

7. How should FHFA evaluate the adequacy of a regulated entity's ability to assess and manage the impacts of climate and natural disaster risk, particularly in light of the significant uncertainties and data limitations?

8. What specific processes and systems of a regulated entity should FHFA examine in its supervision of the regulated entities' climate and natural disaster risk management?

13. Should FHFA implement a stress testing, scenario analysis, or similar program to assess the regulated entities' climate and natural disaster risk? If so, what factors should FHFA consider in defining the purposes, design, and scenarios of any such programs?

20. What type of organizational structures should FHFA and the regulated entities consider adopting for themselves to support the management of climate and natural disaster risk?

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[10] Gabriella Velasco, *We Can't Address Our Housing Crisis without Addressing Our Climate Crisis*, Urban Institute (April 14, 2021).
[11] Wesley Jenkins, *Community-based Approaches Combined with National Policy Implications Represent the Future of Environment Justice Research*, Urban Institute (March 29, 2021).

25. What, if any, other enhancements should FHFA consider to its supervision and regulation of each regulated entity's management of climate and natural disaster risk? Other enhancements could include but need not be limited to: (i) regulatory capital requirements or other loss-absorbing capacity requirements that ensure each regulated entity has the capacity to absorb impacts of climate and natural disaster risk; (ii) disclosure requirements to provide shareholders, creditors, CRT or other investors, and other counterparties with appropriate information about a regulated entity's climate and natural disaster risk; and (iii) changes to FHFA's supervisory program to enhance examination of or reporting on each regulated entity's infrastructure and processes for identifying, assessing, mitigating, and monitoring the regulated entity's management of climate and natural disaster risk.

FHFA must ensure that climate and natural disaster risk mitigation initiatives avoid discriminatory outcomes as well as promote equitable treatment of borrowers and communities of color. As noted above, there is a close nexus between climate and natural disaster risk and race/ethnicity, which raises the risk that any climate and natural disaster risk initiatives will lead to adverse outcomes for communities of color. As the regulator of the GSEs, FHFA has a unique responsibility to identify and address any potentially discriminatory outcomes as well as promote financial inclusion and affirmative initiatives that help communities of color mitigate their risk.

FHFA's responsibility to ensure that the GSEs are in compliance with fair lending laws and to promote financial inclusion stems from several laws, regulations, and policies, including:

- Federal Housing Enterprises Financial Safety and Soundness Act ("FHEFSSA"): FHEFSSA set forth Congress' expectations that the GSEs would adhere to the requirements of the fair lending laws.[12]
  - The implementing regulations promulgated by the U.S. Department of Housing and Urban Development ("HUD") state that "[n]either [of the GSEs] shall discriminate in any manner in making any mortgage purchases because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect."[13]

- Fair Housing Act: Section 3605(a) of the Fair Housing Act states: "It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin."[14] Section 3605(b) of the Fair

[12] 12 U.S.C. 4545.
[13] 24 C.F.R. 81.42.
[14] 42 U.S.C. 3605(a). The categories of prohibited discrimination (race, color, religion, sex, handicap, familial status, national origin) are hereinafter referred to as a "protected class" or a "prohibited basis."

Housing Act defines a "residential real estate-related transaction" to include the "purchasing of loans…secured by residential real estate."[15]

- The implementing regulations promulgated by HUD state: "It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin."[16] The regulation further states that "this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status or national origin."

- Equal Credit Opportunity Act ("ECOA"): The ECOA makes it "unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, public assistance income, or the good faith exercise of rights under the Consumer Credit Protection Act.[17]
  - The implementing regulation ("Regulation B") promulgated by the Consumer Financial Protection Bureau ("CFPB") states that the term "creditor" includes "a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. The term creditor includes a creditor's assignee, transferee, or subrogee who so participates."[18]
  - The CFPB's Official Staff Commentary states that the prohibition includes discrimination "because of the race of other residents in the neighborhood where the property offered as collateral is located."[19] This clarifies that the prohibition covers not just individual borrowers of color but also residents of communities of color, regardless of the borrower's race or national origin.

- Supervisory Authority: FHFA has broad authority to oversee the GSEs' compliance with fair lending laws by, for example, conducting examinations, issuing Matters Requiring Attention ("MRAs"), or initiating enforcement actions.[20]

- Strategic Plan: Objective 2.2 of FHFA's Strategic Plan is to "[e]nsure that the regulatory entities fulfill their statutory missions to support affordable housing, community development, and diversity and inclusion requirements."[21] Among other things, FHFA stated its plan to use the following Means and Strategies to achieve the objective:
  - Monitor and promote compliance with fair lending laws at the regulated entities.

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[15] 42 U.S.C. 3605(b).
[16] 24 C.F.R. 100.125.
[17] 15 U.S.C. 1691(a).
[18] 12 C.F.R. 1002.2(*l*).
[19] 12 C.F.R. 1002.2(z), Comment-1.
[20] *See* 12 U.S.C. 4513b, 4514, 4517; 24 C.F.R. 81.47.
[21] FHFA's *Strategic Plan: Fiscal Years 2021-2024* can be found here.

- Promote financial inclusion and economic opportunity through fair access for, and fair treatment of, mortgage borrowers at the regulated entities.

As evidenced by these laws, regulations, and policies, FHFA must avoid discriminatory outcomes as well as promote financial inclusion. More specifically, FHFA should ensure the GSE's compliance with fair lending laws using a risk-focused approach to supervision and analysis. In this case, as described above, the risk is high that climate and disaster risk mitigation initiatives will have a discriminatory impact on communities of color. Accordingly, FHFA should review all proposed initiatives in the early stages to avoid discriminatory outcomes; continue to monitor implemented initiatives for discriminatory outcomes, and, where appropriate, issue MRAs and require remediation to avoid or remedy harm to communities of color. In addition, FHFA should promote financial inclusion and equitable treatment of communities of color by encouraging the GSEs to take affirmative steps to develop policies, products, and programs that would help homeowners and buyers in vulnerable communities to understand and mitigate their climate and natural disaster risk.

Government entities have faced serious compliance and legal risk when they failed to make the connection between climate and/or disaster risk and potential discrimination against communities of color. For example, in 2008, HUD and the Louisiana Recovery Authority established a home rebuilding program known as the "Road Home Program" to get residents back to the region after the devastating destruction of Hurricanes Katrina and Rita.[22] Under this program, the amount of a homeowner's grant was determined based on the lesser of two amounts: the pre-storm value of an individual's home or the cost of repairing the home. Unfortunately, in New Orleans, as in many American communities, homes in predominantly Black neighborhoods had lower market values than comparable homes in white neighborhoods. This meant that many Black homeowners received smaller grants even though the cost of repairs was the same as the cost for white homeowners. By not understanding the history of discrimination in communities of color, HUD and the Louisiana Recovery Authority failed to recognize the potential for discriminatory outcomes in the disaster recovery effort. Civil rights groups, including NFHA and the Greater New Orleans Fair Housing Action Center (now the Louisiana Fair Housing Action Center), as well as several affected homeowners sued HUD and the Louisiana Recovery Authority for violations of the Fair Housing Act and the Housing and Community Development Act. The litigation prompted the state to implement an additional compensation grant for low- and moderate-income program participants, removing the use of pre-storm value in assessing awards to 46,000 program participants and resulting in $450 million in additional funds to participants, primarily in communities of color.[23] In 2011, HUD and the Louisiana Recovery Authority settled the lawsuit and agreed to pay as much as $62 million to affected homeowners.[24]

[22] NAACP Legal Defense Fund, _Road Home_ (Nov. 12, 2008).
[23] Gerald Shields, _Road Home Suit Resolved_, The Advocate (July 6, 2011).
[24] Michael A. Fletcher, _HUD to Pay $62 Million to La. Homeowners to Settle Road Home Lawsuit_, Wash. Post (July 6, 2011).

FHFA should be aware of the serious compliance risk and consider the following fair lending risk management controls in connection with its responsibilities for overseeing the GSEs' compliance with fair lending laws:

- Discretion: FHFA should carefully review the GSEs' policies, procedures, and automated underwriting systems to ensure that the GSEs' use of discretion in connection with climate and natural disaster risk mitigation is limited and carefully monitored for fair lending risk.

- Model Risk Management: FHFA should ensure that models the GSEs use for climate and natural disaster risk mitigation do not rely on biased data and are carefully reviewed for fair lending risk.

- Data Management: FHFA should ensure that the data used by the GSEs are carefully reviewed for fair lending risk, including data based on historically undervalued communities of color.

- Data Collection: FHFA should ensure that the GSEs collect the data needed for robust fair lending testing.

- Complaints: FHFA should ensure that the GSEs track and address any complaints that raise concerns about potential discriminatory outcomes related to climate and natural disaster risk mitigation. FHFA should also implement a process for reviewing complaints, including complaints received from the Consumer Financial Protection Bureau or other agencies.[25]

- Ongoing Fair Lending Training: FHFA should ensure that the GSEs provide ongoing fair lending training for the key staff and third parties that are involved in climate and natural disaster risk mitigation activities.

- FHFA's Statistical Analysis: In addition to reviewing any statistical analysis conducted by the GSEs, FHFA should conduct its own analysis to ensure that any proposed or implemented climate and natural disaster risk mitigation initiatives do not result in disparate treatment or disparate impact for communities of color.

FHFA's work in this area also should be informed by the need to balance progress in providing access to energy efficiency measures with the need to ensure financial inclusion products are sustainable for homeowners, communities, and investors. Previously, FHFA issued an RFI seeking input on Property Assessed Clean Energy ("PACE") Loans. NFHA, along with the National Consumer Law Center and several other organizations, submitted the following detailed comments highlighting the need to include strong consumer protections

[25] *See CFPB and FHFA Announce Borrower Protection Program* (April 15, 2020) (announcing, among other things, that the CFPB would make complaint information and analytical tools available to FHFA).

along with PACE loans.[26] Those comments are relevant to the issues raised in this RFI. We repeat them here for easy reference and urge FHFA to address them as part of its climate and natural disaster risk-management effort.

> *We appreciate the FHFA's interest in the developing PACE market and the increased risk it is creating for consumers, mortgage investors, and the housing market. We understand that the super-priority lien position of PACE loans creates difficult risk management challenges for the Enterprises, and we support the FHFA's decision to prohibit Fannie Mae and Freddie Mac from purchasing or refinancing mortgages with PACE liens attached. We also appreciate the public statements made by the FHFA in urging states to adopt robust underwriting standards to protect homeowners.*
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> *However, many of the proposals suggested in the FHFA's RFI would place additional burdens on homeowners without addressing the underlying consumer protection issues presented by PACE mortgage loans or furthering the goal of reforming the PACE industry. Instead, they are directed solely at consumers, and narrowly view potential problems to the Enterprises as being caused by consumers. Rather than impose punitive measures on consumers, we believe the FHFA and Enterprises should use their authority and influence over the housing finance market to incentivize PACE lenders and state actors to enhance consumer protections and adopt policies that limit risk to the Enterprises. As discussed more fully in our responses to the RFI questions, the FHFA and Enterprises should:*
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> - *encourage the CFPB to issue regulations that apply all of the Truth in Lending Act's home mortgage provisions to PACE;*
> - *encourage states to adopt comprehensive PACE enabling statues that protect consumers and the Enterprises, such as the Minnesota residential PACE statute;*
> - *encourage states to make PACE assessments have subordinate lien status (or undertake measures that would result in a similar outcome);*
> - *work to obtain loss guarantees from states or municipalities; and*
> - *create new consumer financing products for energy efficiency improvements, so that consumers will have viable alternatives to PACE.*

C. <u>FHFA Research</u>: FHFA should consult with key stakeholders (including civil rights and housing advocates); develop a research agenda; conduct robust research on the intersection between climate and natural disaster risk, mitigation strategies, and communities of color and other protected classes; and make its findings public in a timely manner.

Responsive to the following RFI questions:

[26] NFHA, National Consumer Law Center, National Housing Law Project, Consumer Federation of America, and Americans for Financial Reform Education Fund, Comment Letter to FHFA regarding the Request for Input for PACE Program at 3 (March 16, 2020).

21. What specific issues or topics should FHFA consider for future research on climate and natural disaster risk to the regulated entities and the national housing finance markets?

22. What data or housing market information would be beneficial for FHFA to make available, to the extent permitted by privacy considerations, to researchers and other interested parties to support the assessment of climate and natural disaster risk to the regulated entities or the national housing finance markets?

FHFA should consult with key stakeholders (including civil rights and housing advocates); develop a research agenda; conduct robust research on the intersection between climate and natural disaster risk, mitigation strategies, and communities of color and other protected classes; and make its findings public in a timely manner. As noted above, researchers and journalists have started to examine the extent to which climate and natural disaster risks also pose risks to communities of color, including from ineffective or nonexistent climate and natural disaster risk mitigation policies in communities of color and increased costs for borrowers of color. Still, much more work needs to be done to understand the impact on communities of color and other protected classes. We strongly encourage FHFA to marshal its vast resources, including legal and economic expertise as well as data access, to thoroughly review the issues and propose effective solutions.

FHFA's efforts on language access issues may provide a roadmap for undertaking this challenge.[27] In 2017, FHFA required the GSEs to identify major obstacles for Limited English Proficient ("LEP") borrowers in accessing mortgage credit, analyze potential solutions, and develop a multi-year plan to support improved access. FHFA requested public input, and FHFA and the GSEs conducted outreach to industry and consumer groups. The effort involved conversations in a variety of settings with a variety of stakeholders, including community advocates and focus groups with LEP borrowers. FHFA may find it appropriate to conduct a similar effort here, in addition to conducting comprehensive statistical analysis of the impact of climate and natural disaster risk mitigation proposals on communities of color and other protected classes. To the extent permitted by privacy considerations, FHFA should make all of the results of these analyses available to the public.

D. Partner Organizations: FHFA should coordinate with key stakeholders (including other government agencies, civil rights groups, and housing advocates) to better understand climate and natural disaster risk and the impact on communities of color and other protected classes.

Responsive to the following RFI questions:

23. What factors should FHFA consider in determining whether to formally participate in or informally partner with organizations or groups focused on climate and natural disaster risk management?

[27] *See* FHFA, Language Access, (updated Sept. 2020).

24. Are there existing or potential government agencies or programs that FHFA could partner with to enhance the Agency's supervision and regulation of climate and natural disaster risk to the regulated entities?

FHFA should coordinate with key stakeholders (including other government agencies, civil rights groups, and housing advocates) to better understand climate and natural disaster risk and the impact on communities of color and other protected classes and devise appropriate strategies for mitigating that risk. In the RFI, FHFA recognizes that domestic and international regulators and other policymakers are increasingly interested in addressing climate and natural disaster risks and that, at this point, FHFA does not have expertise in climate science.[28] The RFI also recognizes recent climate-related analysis conducted by the Federal Reserve, the Commodity Futures Trading Commission, and the Senate Democrats' Special Committee on the Climate Crisis.[29] We strongly encourage FHFA to collaborate with these groups as well as the other federal banking agencies, including the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration; the Securities and Exchange Commission; the U.S. Department of Housing and Urban Development; the Federal Emergency Management Agency; and other executive agencies.

The government agency focus on climate risk and communities of color and other protected classes is consistent with President Biden's recent Executive Order, which emphasizes a whole-of-government approach by stating: "Together, we must combat the climate crisis with bold, progressive action that combines the full capacity of the Federal Government with efforts from every corner of our Nation, every level of government, and every sector of our economy."[30] The order also emphasized the intersection with equity issues by stating that it was the Administration's policy "to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care."[31] The Executive Order offers useful guidance for all government agencies, including independent agencies.

Finally, where possible, FHFA should coordinate with and support local groups seeking effective community-wide solutions. While there may be steps that individual property owners or developers can take to improve the likelihood that their properties can withstand disasters and other climate impacts, the larger issues raised by climate change and natural disasters cannot be solved on a house-by-house basis. In many cases, federal, state, and local government entities will need to develop risk mitigation initiatives that address the issues for the entire community, including communities of color and other protected classes. In sum, we strongly encourage FHFA to understand the concerns of community advocates and to partner with federal, state, and

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[28] RFI at 4.
[29] *See id.*
[30] Executive Order on Tackling the Climate Crisis at Home and Abroad, Section 201, Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021).
[31] *See id.* at Section 219.

local government entities in coordinated, government-wide initiatives to build expertise and seek effective solutions.

Conclusion

NFHA appreciates the opportunity to provide its responses to the RFI and looks forward to engaging with FHFA on these important matters.

For questions, please reach out to the following staff of the National Fair Housing Alliance: Debby Goldberg at -240-393-1912 or DGoldberg@nationalfairhousing.org; or Morgan Williams at 202-486-2776 or MWilliams@nationalfairhousing.org.

Sincerely,

Lisa Rice

Lisa Rice
President and Chief Executive Officer