SENATE GSE REFORM PROPOSAL

A Blow to Affordable Housing and Harmful to the Overall Housing Market

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U.S. Senators restructure our nation's housing finance system

U.S. Senators are in negotiations over legislation to dramatically restructure our nation's housing finance system. A now public version of the draft bill is indicative of the legislative trajectory.[1] In a recent paper, proponents of this proposed housing finance legislation argue that this draft bill would advance housing affordability.[2] Their analysis of the proposed system, however, has critical unsupportable assumptions and omissions.

The analysis claims to make an equal comparison of the current and proposed system, but it instead uses numbers and assumptions that substantially inflate the cost of the current system. It also makes overly optimistic assumptions about costs and benefits of the proposed system, and it omits other costs entirely. When these assumptions are corrected, it is clear that the cost of the proposed system would be far greater than the current system.

Most important, the proposed legislation would jettison the very foundation blocks of the obligation of companies using government backing to promote the public interest, including: serving a national market, including rural and urban areas; serving all lenders equitably, including community banks and credit unions; promoting fair housing and increasing access to affordable mortgage credit for underserved borrowers; and meeting enforceable affordable housing goals and enforcement provisions.[3] Under the proposal, these would be repealed and replaced with unenforceable aspirations and even explicit prohibitions on interfering with the "business judgment" of those receiving and profiting from government backing.[4]

In addition, the comparison of the affordable housing assistance of the proposed system itself uses narrow scenarios and unreasonable assumptions that tilt the numbers erroneously towards the proposal, while a more neutral analysis shows that those promises are unattainable. When one looks behind the promises, it is clear that this legislation would be a historic setback for affordable housing and would harm the overall housing market.

EXECUTIVE SUMMARY

The proposed housing finance legislation would impose great harm on affordable housing efforts and the overall housing market. Proponents of the legislation do not address the damage the proposal would do by repealing the existing structural protections for equitable housing access for all areas of the country, all lenders, and all credit-worthy borrowers. In addition, their cost projections for the proposed system use assumptions heavily tilted toward the proposed system. When these are corrected, the cost of the proposed system is much higher, and its affordable housing program far less effective.

The current system, which was substantially reformed by the Housing and Economic Recovery Act of 2008, requires that those benefiting from government backing serve the public interest through enforceable obligations.

The proposed system weakens the housing market:

- Repeals existing protections and incentivizes an increased number of new guarantors to maximize the benefit to themselves by serving the most lucrative areas of the country, the largest lenders, and the wealthiest borrowers.
- Harms affordable housing by repealing the duty to serve all credit-worthy borrowers, enforceable housing goals, and built-in equitable pricing for a far less effective proposed fee and unenforceable general aspirations to serve the full market.
- Seriously undermines fair lending by insulating the new guarantors from review of whom they serve by blocking review of their practices, leaving them to the "business judgment" of the new guarantors.
- Introduces huge risks to the overall housing market with its doubtful structure of guarantors with few and unenforceable duties.

The proposed system will also increase costs:

- Provides less cross-subsidy to underserved borrowers than the current system. For a representative mortgage market like 2001, the average subsidy per loan is just over 8 bps in the proposed system, down from the over 15 bps subsidy provided in the current system.
- Increases G-fees, after correcting assumptions about the current and proposed system. When correcting assumptions about capital costs, funding costs, the Market Access Fund, and the return on capital held, the propose system results in a G-fee that is 32.2 bps higher, rather than the 3.7 bps increase described in the proposal.
- Increases, not decreases, the average mortgage interest rate. After correcting assumptions about G-fees and the value of a government guarantee, the proposed system will result in a 22 bps increase in the average mortgage interest rate rather than the claimed 16 bps decrease.

It would be far better to continue ongoing housing finance reform based on a model of guarantors with a strong public interest duty and rigorous oversight to ensure that duty is safely fulfilled and protects taxpayers.

FINDINGS

Finding 1: The proposal would abolish the current fundamental provisions to ensure equitable access to government backed home loans

The current GSEs, like the new guarantors in this proposed legislation, benefit from government backing, and, indeed, that backing is an essential basis for their business.[5] Accordingly, duties and limitations are presently placed on the GSEs, and these were strengthened with the passage of the Housing and Economic Recovery Act of 2008 (HERA) and under the conservatorship of the Federal Housing Finance Agency (FHFA). Central is the basic agreement that in exchange for this government backing, these entities have a legally enforceable duty to advance the public interest by serving all markets, all credit-worthy borrowers, and all lenders, and by protecting taxpayers.[6] The GSEs today are subject to enforcement provisions, restrictions on business, and penalties to ensure these duties are met. These requirements have greatly advanced housing in the United States. For example, GSE involvement in the rural market has dramatically improved access to home credit for rural borrowers.[7] Similarly, community banks, credit unions, and small lenders depend on the current access and affordability protections to ensure that government backing does not disproportionately aid larger lenders and tilt the market against them. Also, lower-wealth borrowers in all regions rely on these provisions to affordably access government-backed home loans.[8]

A. The proposal eliminates important public interest duties and undermines fair lending

As a result, these guarantors would be strongly incentivized to "cream" the market, serving the wealthiest housing markets and borrowers, and avoiding places like more dispersed rural markets and borrowers of modest means in many regions across the nation.

Unstated in the paper's analysis of housing access is an acknowledgment that key components of system-wide housing finance would be abandoned and repealed under the proposal. The proposal would eliminate the current GSEs and their charters, without establishing a similar broad duty to serve on the new market participants. Moreover, the proposal would establish a new "business judgment" rule that would insulate these new government-backed guarantors from having to meet essential obligations, including fair lending mandates and a responsibility to serve underserved markets like rural borrowers. In the prior version of this bill introduced by Senators Johnson and Crapo in 2014, provisions prohibited the regulator from interfering with the unbridled discretion of the new government-backed guarantors. The Johnson-Crapo bill included a provision stating: "In carrying out this title, the Corporation shall not interfere with the exercise of business judgment of any approved aggregator or approved guarantor in determining which specific mortgage loans to include in a covered guarantee transaction or a covered market-based risk-sharing transaction."[9] This business judgment rule also applied to the approval process for a guarantor or aggregator as well as the Corporation's supervisory and examination authorities.[10]

Similar language appears in the draft Senate proposal. The proposal states that guarantors' market access proposals are subject to "the business judgment, the current business plan, and the current business activities of the guarantor," and FHFA "shall not review, challenge, or otherwise interfere with the exercise of business judgment of a guarantor in developing a market access proposal, or determining which actions the guarantor is committed to perform under that proposal."[11] As a result, these guarantors would be strongly incentivized to "cream" the market, serving the wealthiest housing markets and borrowers, and avoiding places like more dispersed rural markets and borrowers of modest means in many regions across the nation. Federal supervisors and borrowers would have no recourse to challenge such limits to access.

The business judgment rule in the discussion draft would undermine fair lending under the Fair Housing Act and the Equal Credit Opportunity Act—and is a direct attack on the prevention of discrimination.

The business judgment rule in the discussion draft would undermine fair lending under the Fair Housing Act[12] and the Equal Credit Opportunity Act[13] —and is a direct attack on the prevention of discrimination where there is a disparate impact on protected classes. The language would prevent the regulator from interfering with the guarantors' market access plans and their decision of which loans to guarantee.[14]

Disparate impact discrimination occurs when a facially neutral policy is used, but that practice disproportionately and unnecessarily burdens a protected class.[15] For example, a lender might choose to make loans only in designated parts of a city. If this has a discriminatory effect on a protected class, under current law the lender must establish that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests. The regulator could then show there are reasonable alternative ways to achieve these business interests in a nondiscriminatory way.[16] This common-sense rule is well-settled, and it was recently reaffirmed by the United States Supreme Court in *Texas Department of Housing and Community Affairs* v. *The Inclusive Communities Project, Inc.*[17] The business judgment rule in the housing finance proposal, though, frustrates fair lending and efforts to root out disparate impact discrimination. Under the proposed legislation, if guarantors engage in practices that have a discriminatory effect on protected classes even when such discrimination is reasonably avoidable, their regulator is specifically blocked from examining the practices or correcting them. For communities of color harmed by discrimination, such a setback would dishonor the life and legacy of Dr. Martin Luther King Jr., in whose honor the 1968 Fair Housing Act was enacted.

The legislation would also demolish the current strong access foundations. In its place, the proponents offer the weak tea of a substitute: the proposed Market Access Fund, which is also offered to make up for both the more level G-fee pricing and the affordable housing duties of the current system. An examination of the proposal and the fund shows it would not meet either goal.

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The harmful proposed changes to the structural protections for a housing finance system that serves that public interest and the overall market are summarized in the chart below.

Figure 1. Corker-Warner Proposal weakens GSE public interest mandates

Public interest mandates in the current system	How the Corker-Warner proposal impacts the mandates
Broad Duty-to-Serve (in GSEs' charters)[18]	Abolishes the GSEs' charters and does not impose a broad duty to serve on the multiple guarantors.[19]
Affordable Housing Goals[20]	Abolishes and provides no enforceable substitute.
Equitable Assessment of G-fees[21]	Charges large fees to families of modest wealth and proposes a Market Access Fund as a weak substitute.[22]
Strong Regulatory Oversight[23]	New system provides for little regulatory oversight or enforcement of equitable access and fair lending.[24]

Finding 2: The proposed system would be far less effective in promoting affordable housing

As described above, the current system has multiple enforceable requirements on the GSEs to promote broad access and affordable housing. Proponents of the proposed legislation argue that this could all be replaced by an affordable housing fund. However, it would be a weak substitute.[25]

The largest cost of both systems is providing protection against a reoccurrence of the catastrophic crisis of 2008. This protection is achieved by setting aside capital, beyond the substantial reserves that cover expected losses throughout the business cycle. The current system distributes this cost more equitably among different borrowers, while still charging more on lower credit loans. The current system recognizes that while normal expected losses are more borrower-centered, the catastrophic 2008 crisis was primarily a systemic failure.[26] Therefore, the cost of protecting against such a systemic failure should be spread more equitably, as the current system does. The proposed system, in contrast, would put this cost for catastrophic protection primarily on lower-wealth families, with their loans paying as much as 10 times more for this cost as wealthier borrowers. It attempts to make up for this extreme pricing through its proposed Market Access Fund.[27]

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A. The Market Access Fund is an inadequate substitute for the current system's access and affordability duties

The first weakness of the Market Access Fund is that it is difficult to enact or sustain. Of those clamoring for the abolition of the duty to serve all markets and credit-worthy borrowers, there has been notable silence from most regarding support for the proposed Market Access Fund.[28] More important, the primary proposed use of the fund—to cross-subsidize mortgage payments—is likewise operationally difficult to establish or sustain. A major proposed use is to reduce mortgage payments for targeted borrowers. To do this, the fund would collect fees each month from the payment of all borrowers, and then transfer them each month to the servicers of the loans of targeted borrowers, who would, in turn, use them to pay a portion of targeted mortgage payments. This proposed system would introduce complexity and engender sharp political opposition to such a mechanism.

Even if such obstacles were overcome, the fund remains an ineffectual substitute for the current access provisions. The calculations in the spreadsheet analysis of the proposal assume that the bulk of the Market Access Fund—over 80 %—would be used for this cross-subsidy purpose.[29] Applying it to the current 2016 loan distribution, which has low levels of targeted loans, it would only provide an average

20 bps cross-subsidy to underserved borrowers.[30] To put this in terms of an actual mortgage, on a $200,000 mortgage, 10 bps is $16.66 per month. The analysis generates its larger number of $4,500 by reducing the number of eligible loans. In this narrow scenario, it increases the cross-subsidy to $53.57 per month and then multiplies it by 12 payments per year for seven years.[31] In comparison, the current system provides these same borrowers with an average cross-subsidy of 28.7 bps.[32]

In a more typical and inclusive mortgage market, the current system advantage is even greater. The mortgage market varies widely from year to year, both in total volume and in the composition of loans and borrowers. While the proponents of the proposed system project assistance of 20.0 bps per loan for an underserved market of 30.8% of 2016 GSE originations, that assistance would drop to 8.4 bps per loan when applied to the more inclusive 2001 market where 53.7% of GSE originations went to underserved borrowers.[33] The current system, adjusted for a return on equity of 1287, provides nearly twice the amount of subsidy for underserved borrowers at 15.6 bps (Figure 3).[34]

Figure 2. Cross-subsidies to underserved borrowers under current and proposed GSE System, 2001 portfolio (1287 ROE)

Credit score and loan-to-value ratio	GSE originations (%)	Current system cross-subsidy (bps)	Proposed system cross-subsidy (bps)
700–739 (61–80 LTV)	13.7	(1.6)	(5.0)
700–739 (81–97 LTV)	8.1	15.1	4.0
620–699 (61–80 LTV)	18.9	18.7	12.0
620–699 (81–97 LTV)	13.0	29.6	20.0
Weighted average for underserved borrowers	53.7%	15.6 bps	8.4 bps

Source: Center for Responsible Lending calculations based on Spreadsheet, *supra* note 30, Current System Chart, Current System Row 33–45, Columns H and I and Proposed System, Row 33–45, Column N. Assumes a current system cross-subsidy of capital cost minus the sum of the implicit capitalization percent times an ROE of 1287 divided by 100. The multiplier used to determine current system capital costs for a 1287 ROE in 2001 by credit score and LTV are calculated as (4% implicit capitalization percent multiplied by 1287 ROE divided by 100)/actual capital charge in current system.

B. The proposed system delivers less assistance for advancing homeownership opportunity

Proponents of the proposed system have followed with a second paper that explores how to deliver affordable housing assistance, raising important issues regarding how to advance homeownership.[35] However, the present system delivers greater assistance, and it can be tailored, if desired, in many of the same ways the paper authors discuss but without the level of complexity and limitations the proposed system would create.

One issue raised in this second paper is income targeting of assistance. The authors propose strict income targeting for the proposed system. This option is likewise available and presently used in the current system, as some of the current affordability programs are income targeted.[36] Also, the current system provides the greatest assistance to the most challenged group of borrowers. In the key group of borrowers with credit scores below 700 and down payments of less than 20%, in a typical market like 2001, the GSEs supplement this group 45 bps in G-fee, much greater savings than the 20 bps in the proposed system.[37] Furthermore, a number of the GSE affordable housing measures have reduced or waived mortgage insurance requirements. Mortgage insurance premiums for lower-wealth borrowers are far larger than the G-fees. For instance, for borrowers with credit scores below 700 and down payments of less than 10%, private mortgage insurance averages more than twice the amount of current G-fees.[38] These substantial benefits of reduced mortgage insurance costs go to the most targeted loans. In addition, these mortgage insurance reductions are not included in the paper's analysis of current affordable housing assistance that would be lost in the proposed system.

Important, though, are the serious policy questions about whether all the assistance should be income determined. As noted in the paper, there are challenges in layering an income eligibility requirement onto the mortgage system, and these must be considered.[39] Also, for borrowers of color, many have less family and personal wealth due to the past lack of equal access to programs like Federal Housing Administration (FHA) lending, as well as from the broad impacts of discrimination.[40] This affects credit scores due to the lack of a buffer to absorb financial stresses, yet the proposed system would exclude these households from assistance unless they meet income limits.[41] The income limits are also problematic because the conventional mortgage market is not sufficiently serving borrowers of color—even high-income borrowers. For example, in 2016, over 30% of all loans made to high-income African Americans were FHA loans, while only 8% of high-income white non-Latino borrowers received FHA loans.[42] Overall, income targeting is an important issue, but the new system does not have an advantage in this regard.

On the related issue of the barrier of down payments, this remains a large need. The present system addresses this by providing responsible, low-down-payment loans and down payment assistance, of which more is needed from federal, state, and local providers. While the use of the proposed market access fund for additional down payment assistance would be welcomed, the proposed system includes other provisions that would counteract this aid.[43] For instance, the draft legislation mandates down payments of 5% for most homebuyers and 3.5% for first-time homebuyers. It further imposes extensive and very expensive mortgage insurance requirements for loans without large down payments.[44] These provisions would substantially increase obstacles for lower-wealth borrowers. Furthermore, as these restrictions would be baked into the new statute, they would also remove flexibility necessary to respond to the rapidly changing future mortgage market and perpetuate the racial wealth gap.

Finally, these affordability options remain subject to the Achilles' heel of the proposed system—the lack of enforceability. The proposed system sets up incentives and a lack of restraints so that the new guarantors will cream the market, targeting the richest areas and borrowers. Its proponents acknowledge that targeted loans are more challenging, but they propose to offer subsidies to borrowers through a complex system and then hope that guarantors will act counter to their self-interests and actively promote these loans. There is a big difference between a system in which it is hoped that guarantors will offer to guarantee affordable loans and the current system where it is a core, enforceable requirement that these loans are an important part of their operations.[45]

There is a big difference between a system in which it is hoped that guarantors will offer to guarantee affordable loans and the current system where it is a core, enforceable requirement.

Finding 3. The proposed system would be more expensive than the current system

The proponents' analysis also claims savings in the overall new system, averaging about 16 bps in the net mortgage rate, and these are a major part of its claimed total savings for underserved borrowers.[46] How does the analysis generate claims of savings in the overall system? The key here is the assumptions, and when they are examined, the *higher* cost of the future system is apparent.

The proposed system applies two principle assumptions that generate artificially lower rates. First, the paper asserts that it is making an apples-to-apples comparison by treating the scheduled end of the 10 bps payroll tax assessment and the recently enacted corporate tax rate reduction the same for both the current and proposed systems. The paper states: "We assume that both the future system and the current system benefit from the recent reduction in the corporate tax rate from 35% to 21% and the expiration in 2023 of the payroll tax fee."[47] However, the analysis does not reduce the G-fees of the current system, and this markedly distorts the analysis in favor of the proposed system.

The current GSE G-fee averages 60 bps, and this includes the cost of both the 10 bps payroll tax assessment and the cost of a 35% corporate tax rate. These fees are also based on a 1017 bps—or 10.17%, after-tax rate of return for capital. The spreadsheet explicitly acknowledges this rate of return: "After Tax ROE [rate of return] 1017 bps—consistent with current system's implicit ROE."[48] The expiration of the payroll tax assessment will reduce the G-fee by 10 bps and, applying the lower corporate tax rate, further reduces the G-fee by another six bps. Thus, with these taken into account, the G-fee under the current system should be 44 bps in the future (Figure 3). Surprisingly, though, the analysis uses the higher 60 bps figure to compare to the proposed system.[49]

The analysis does this by inflating the required rate of return on capital for the current system by over 25%, to a much higher required after-tax rate of return of 12.80%. As the cost of the return on capital is by far the largest part of the G-fee, this has a major impact on the G-fee of the current system. This is carried forward into the calculations for the cost of capital in the current system.[50] This inflation of the rate of return is at the amount necessary to exactly negate the payroll tax expiration and leave the current system G-fee at 60 bps. At the same time, the analysis uses the lower 10.17% rate of return for its analysis of the cost of the proposed system, meaning it is assuming the same capital for the new system will be significantly cheaper than the capital for the current system.[51] For both systems, though, the standard for the required return for capital is the same. The GSEs today calculate their capital based on what private investors in the current GSEs would require.[52] The paper further negates the six bps savings from the application of the lower corporate tax rate by adding a new six bps fee to the new GSEs without justification (See Figure 3).[53] The paper's analysis thus negates the effect of the expiration of the payroll tax and the corporate tax reduction for the current system, contrary to its stated assumptions. This materially overstates the cost of the current system and misstates the comparison of the two systems.

In addition, there is a distinct risk that the multiple guarantors in the proposed system would actually have a significantly higher rate of return than the more constrained current GSEs. As noted in the assumptions discussion, the present half-dozen mortgage insurers currently seek an after-tax return of 14% or more, much higher than the assumption used in the proposed system analysis of 10.17%. Like the proposed new guarantors, the present mortgage insurance companies are monoline companies that guarantee credit risk on mortgages.[54] Thus, if there is a higher rate of capital for one of the systems, it should be for the proposed system, as compared to the two, more utility-like GSEs. Furthermore, expanding the number of new guarantors is likely to increase operating and marketing costs compared to the current system. This would likely further add to the cost of the future system, and this cost is not considered. The guarantors in the new system would also carry more risk due to their smaller and less geographically diversified pools of loans, further adding to their cost and volatility (See Figure 3).

Another large cost concerns the paper's analysis of the cost of the Mortgage Insurance Fund fee. It assumes that seed money—$60 billion in cash—would be deposited in the proposed Mortgage Insurance Fund (MIF) at its creation.[55] This cost of the proposed system, though, is not included in the cost comparison. Without this $60 billion in seed money, the cost to borrowers for the Mortgage Insurance Fund fee in the new system would increase by another 10 bps, further increasing the cost of the proposed system. (Figure 3).[56]

Without this $60 billion in seed money, the cost to borrowers for the Mortgage Insurance Fund fee in the new system would increase by another 10 bps, further increasing the cost of the proposed system.

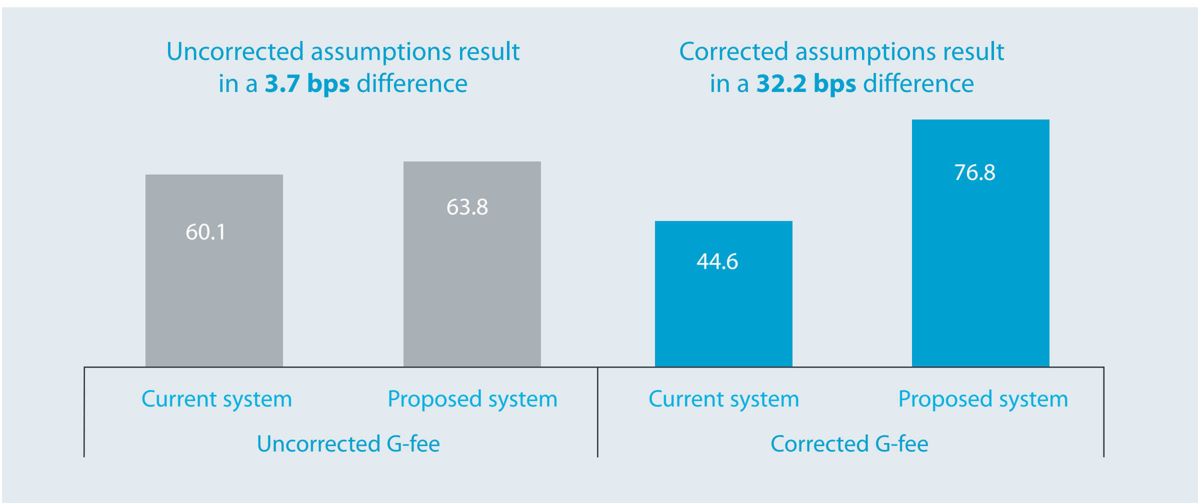
Figure 3. Corrected assumptions for current and proposed system

	Current system corrected	Proposed system corrected	Net difference
G-fee without corrections	**60.1 bps**	**63.8 bps**	**3.7 bps**
Capital costs	-10.0		
Mortgage Insurance Fund		+10.0	
Funding cost	- 5.5		
Return on capital held		+ 3.0	
Corrected G-fee	**44.6 bps**	**76.8 bps**	**32.2 bps**

Source: Center for Responsible Lending analysis of Spreadsheet, *supra* note 30. For a complete description of the changes to the assumptions in the current and proposed system, see Appendix A.

Because of these changes, the corrected total G-fee under the current system is 44.6 bps and 76.8 bps for the proposed system. The corrected analysis results in a 32.2 bps G-fee increase, rather than the 3.7 bps increase in the uncorrected analysis (Figure 4).

Figure 4. Corrected assumptions for current and proposed system, 2016 portfolio



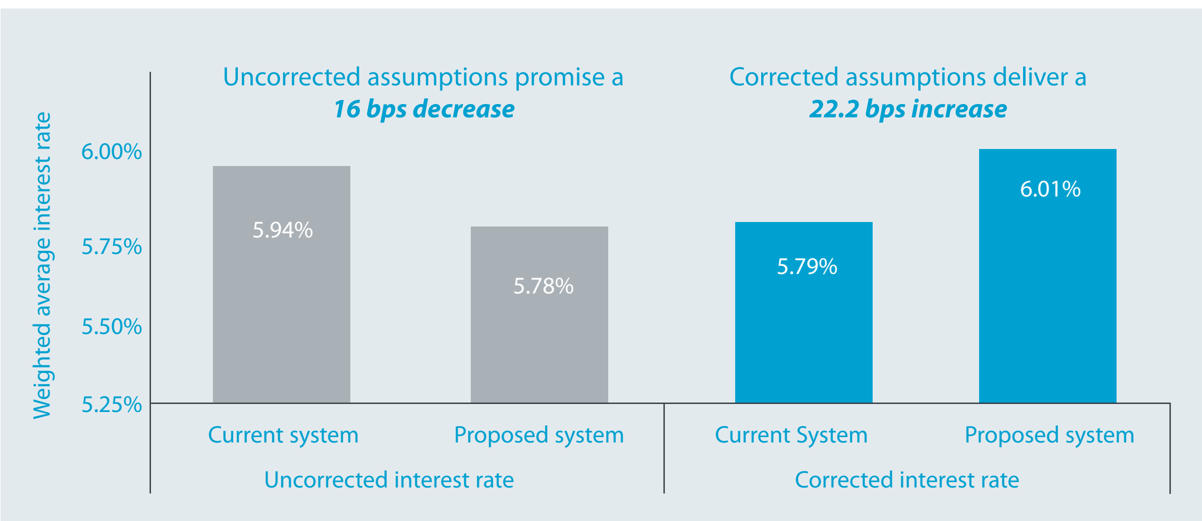
Source: Center for Responsible Lending analysis of Spreadsheet, *supra* note 30. For a complete description of the changes to the assumptions in the current and proposed system, see Appendix A.

A second key assumption is the projection that the transition to a full faith and credit guarantee would produce, by itself, a 20 bps savings for all loans in the proposed system. The current GSEs have an explicit line of credit from Treasury that is more than twice the projected losses from the most extreme loss scenario, so its securities have the highest credit rating. A full faith and credit government guarantee thus would not significantly add to this margin of safety, but it would change the legal status of these securities for some regulations and investors, as many regulations make it easier for regulated entities to hold investments that carry a full faith and credit guarantee. Today, many investors hold Ginnie securities for this reason. Consequently, if full faith and credit were provided on the new guarantor securities, some current investors that hold Ginnie securities because of their current full faith and credit guarantee would likely switch to the new conventional loan securities. Barclays conducted an analysis of these proposed housing finance changes last summer.[57] They conclude that changing the GSE securities to a full faith and credit would likely result in a six to 10 bps reduction in spreads on conventional securities, rather than the much larger 20 bps assumed in the paper. In addition, they believe that the spreads on new Ginnie MBS could widen, or increase, by five to 10 bps. These changes would increase the cost of FHA, VA, and rural housing lending—housing that is highly targeted, and it would result in a reduction in affordable housing impact. Morgan Stanley analysts reach the same conclusion—that providing a full faith and credit guarantee to future conventional mortgage securities would result in a convergence of pricing for conventional and Ginnie securities, with a much smaller resulting savings in mortgage rates than assumed in the proponent's analysis. [58] The paper does not mention or discuss this dynamic or these analysts' conclusions. While opinions vary on the nature and scope of the impact of this proposed change, it is important that this one uncertain factor *by itself equals all of the claimed savings of the proposed system.* The calculation in Figure 5, below, of the projected mortgage interest rate for the proposed system uses the most generous level of the Barclays estimate, 10 bps, for the impact of a government guarantee. Cumulatively, fair treatment of the payroll tax expiration, the corporate tax rate reduction, and the required rate of return in the two systems, combined with a benefit from the full faith and credit in line with the Barclays and Morgan Stanley analyses, would more than wipe out the purported savings of the new system and that the current system costs substantially less.

While opinions vary on the nature and scope of the impact of this proposed change, it is important that this one uncertain factor *by itself equals all of the claimed savings of the proposed system.*

When these adjustments are made, the proposed system *raises,* rather than lowers, the G-fees and the resulting mortgage costs to families (Figure 5).

Figure 5. The proposed system adds costs, not savings, after correcting key assumptions



Source: Center for Responsible Lending analysis of spreadsheet, *supra* note 30. For a complete description of the changes to the assumptions in the current and proposed system, see Appendix A.

Finding 4. The analysis leaves out the proposal's harm to affordable rental housing and FHA borrowers.

The proposed legislation would also constrict support for affordable rental housing and FHA lending, and this is not taken into account in the paper's analysis. The GSEs today play a major role in supporting affordable rental housing by supporting a secondary market for these loans. This both increases the availability and reduces the cost of this critical housing credit.[59] The draft proposed legislation would cap the amount of this support, and limit the cap's increase to inflation, even though the demand for affordable rental housing is growing and projected to continue to grow.[60]

Additionally, other proposals for housing finance legislation call for restricting the availability of FHA housing, limiting the types of loans, the size of loans, and the eligibility of borrowers, and these provisions would likely be included in any final legislation.[61] FHA lending plays an essential role in providing homeownership, particularly for first-time homebuyers and homebuyers of color.[62] These restrictions would not only reduce the availability of FHA loans, they would also raise the cost to borrowers of the remaining FHA loans by concentrating the highest risk loans at FHA. The paper does not include these important contractions of affordable rental and FHA housing in its analysis of the proposal's impact.

Finding 5. There is a better path of building on existing housing finance reform and further advancing it.

Many ask, what is the path forward in the absence of immediate legislation? In fact, dramatic housing finance reform has already been implemented over the past 10 years, and it is ongoing and should continue through the administrative process.

Dramatic housing finance reform has already been implemented over the past 10 years, and it is ongoing and should continue through the administrative process.

After the financial crisis began, Congress responded in 2008 with comprehensive housing finance reform. HERA was 10 years in the making, and it dramatically changed the duties, operation, and oversight of the GSEs. The previous weak oversight of the GSEs was replaced with a powerful new regulator charged with imposing strong capital standards and ensuring that the GSEs' activities be limited to those necessary to further their public purpose. It further equipped the newly created FHFA director with the necessary tools to enforce these requirements. HERA provided FHFA with a broad range of administrative enforcement tools, including cease and desist orders, civil money penalties, debarment of officials, and the ability to act against entity-affiliated parties.[63] FHFA may also access the courts through its independent litigation authority.[64]

Additionally, under conservatorship, the GSEs' previous excessive portfolios of loans, which were used to increase leverage and profitability, were reduced by $1.5 trillion to reduce risk while still serving their essential function of pooling loans for securitization and modifying mortgages. The GSEs have further reduced taxpayer risk by entering into transactions to transfer the credit risk on most of their loans, reducing the amount of risk that they hold. They have also been prohibited from engaging in political or lobbying activities, which in the past had been used to reduce their oversight. Under HERA, the FHFA director also has the authority to review and approve new product offerings.[65] One of the standards for approval is that the product is in the public interest.[66] In sum, the GSEs are fundamentally changed for the better, and the pre-2008 GSEs are a relic of the past.

Continuing and expanding these reforms can and should be done under the FHFA and Treasury's broad authority over the GSEs. Further reforms to ensure that the public interest is pursued safely should include: continuing and expanding permanent utility-type oversight and regulation of the GSEs and their practices and pricing, the prohibitions on lobbying and political contributions, the reductions and limitations on portfolios, and strong capitalization of the GSEs.[67] The GSEs should also continue and expand their credit risk transfer programs to reduce and diversify their risk. The boards of the GSEs could have designated public positions to protect the public interest, with board seats designated for taxpayers, borrowers, and lenders, including community banks and credit unions.[68]

This is far preferable to the counterproductive and risky current legislative proposals. These proposals would liquidate the GSEs and build a new system with multiple government backed guarantors with little oversight over whether they use the guarantee to further the public interest of making responsible homeownership and affordable rental housing accessible to the full market. Moreover, there are substantial questions regarding whether this new system and its transition would even work.[69] The proposed system would also contribute to wider swings in the already too volatile housing market. As we saw in the Great Recession, private capital rushes in when a market is booming, further feeding the boom, and this capital disappears in tight times when it is needed most. After the crisis, the GSEs and FHA provided most of the credit for home loans as private capital fled. Without this credit, the Recession would have been much deeper and longer.[70]

Finding 6. Preserving access and affordability in housing finance is important for the borrowers of the future and the overall housing system

Homeownership is the primary way that most Americans build wealth and remain in a stable middle class. For our housing finance system to work effectively, it must serve the broad market, and that market is rapidly changing. Most new household formation is families of color, and new homebuyers are increasingly families of color.[71] The future market depends on ensuring that millennials and people of color are well-served. This also benefits existing homeowners, especially older Americans, who will need buyers when they want to sell, when new families will need access to affordable mortgage credit to buy their homes.

In addition, without access to safe and affordable mortgages for families of color, the persistent and stubborn racial wealth gap is likely to grow. The Great Recession exacerbated inequality in wealth distributions, with black homeownership rates falling to levels that existed before the enactment of the 1968 Fair Housing Act.[72] According to the Pew Research Center, in 2012 whites had 13 times the wealth of African Americans and 10 times the wealth of non-white Hispanics.[73] Specifically, whites had a median wealth of $141,900 compared to $13,700 and $11,000 for non-Hispanic whites and African Americans respectively.[74] Also, the St. Louis Federal Reserve reports that one in nine whites have less than $1,000 in wealth compared to one in four for Latinos and one in three for African Americans.[75] Home equity plays a great role in determining a family's wealth and is the largest contributor to the racial wealth gap between whites and people of color.[76] The proposed system would harm these important market segments, making it harder to serve the overall market and hindering progress on economic equality.

Without access to safe and affordable mortgages for families of color, the persistent and stubborn racial wealth gap is likely to grow.

CONCLUSION

In summary, the claimed savings of the proposed new system would not in fact occur. When unfavorable treatment of the current system and optimistic assumptions about the proposed system are corrected, the greater cost and uncertainty of the proposed system are clear. The major difference in the two systems is the role of full access and affordable housing. We must ask ourselves: Is serving all markets across the country, all lenders, and all credit-worthy borrowers a central purpose of government backing of this market, or is it an add-on feature incidental to the system? The proposed system would abolish the current structure that is built around this public interest purpose. It would put in its place a system in which private guarantors are encouraged to use the government backing to focus on the markets, lenders, and borrowers that best add to their bottom line and would largely serve borrowers that already have wealth and access to credit. It attempts to add the band-aid of a Market Access Fund, but as demonstrated above, this is an inadequate substitute. Thus, the proposed bill would be an enormous setback for equitable access to homeownership, harm the overall economy, and hinder the advancement and security of American families.

Appendix A. Corrections to assumptions about current and proposed GSE are necessary, and changes show that average interest rate will increase (2016 portfolio)

Components of G-fee (weighted average)	Uncorrected proposed system (bp)	Corrected proposed system (bp)	Uncorrected current system (bp)	Corrected current system (bp)	Corrected difference
Capital costs[77]	40.4	40.4	48.6	38.6	
G&A cost and payroll tax	6.0	6.0	6.0	6.0	
Expected losses	11.5	11.5	11.5	11.5	
Mortgage Insurance Fund[78]	10.0	20.0	0.0	0.0	
Market Access Fund	0.6	0.6	n/a	n/a	
Funding cost[79]	10.0	10.0	5.5	0.0	
Return on capital held[80]	-14.7	-11.7	-11.5	-11.5	
Total G-fee	63.8	76.8	60.1	44.6	32.2 bps
Treasury yield	367.0	367.0	367.0	367.0	
MBS spread[81]	70.0	80.0	90.0	90.0	
Servicing and origination fee	50.0	50.0	50.0	50.0	
Weighted PMI	27.4	27.0	27.4	27.0	
Corrected interest rate	5.78%	6.01%	5.95%	5.79%	0.22%

Source: Center for Responsible Lending analysis of Spreadsheet, *supra* note 30.

ENDNOTES

1 *See* Staff Discussion Draft, *available at* https://assets.bwbx.io/documents/users/iqjWHBFdfxIU/r8xUN8jPpe5c/v0.

2 Jim Parrott, Michael Stegman, Phillip Swagel, and Mark Zandi, *Access and Affordability in the New Housing Finance System* (Feb. 2018), *available at* https://www.urban.org/research/publication/access-and-affordability-new-housing-finance-system.

3 *See* 12 U.S.C. § 1716; 12 U.S.C. § 1451 note (Fannie Mae and Freddie Mac charters). *See also* Housing and Economic Recovery Act, Pub. L. No. 110-289 (2008), §§ 1128, 1130 (housing goals), § 1129 (duty to serve underserved markets).

4 *See* Staff Discussion Draft, §§ 504(a)(1)(B) and (b)(1).

5 In the current system, the GSEs benefit from a federal charter, an implied government guarantee, and a direct line of credit to Treasury. The implicit guarantee has been reinforced in conservatorship. The proposed system would include an explicit government guarantee, which is a feature we support.

6 Housing and Economic Recovery Act, Pub. L. No. 110-289 (2008). Additionally, capital levels were not sufficiently strong pre-HERA. Sec. 1111 of HERA established minimum capital levels.

7 Brent Ambrose and Richard Buttimer Jr., *GSE impact on rural mortgage markets,* Regional Science and Urban Economics 35, no. 4 (2005): 417–43.

8 The GSEs are increasing their affordable housing programs as they recover from the crisis. The GSEs should do more to advance affordable housing, such as eliminate excessive risk-based pricing in PMIERS and loan level price adjustments.

9 Housing Finance Reform and Taxpayer Protection Act of 2014, S.1217, 113th Cong. § 201(b)(1) (2013).

10 *Id.*

11 Staff Discussion Draft, §§ 504(a)(1)(B) and (b)(1).

12 42 U.S.C. § 3601.

13 15 U.S.C. § 1691.

14 The discussion draft includes a safe harbor for guarantors acquiring eligible loans. It states that a guarantor is deemed to provide an ongoing and equitable presence in required and underserved markets if the guarantor made a good faith offer based on an automated or other method for developing pricing, credit overlays, or other terms that are generally applicable across other markets in which the guarantor offers to acquire the relevant class of loans, and includes the credit risk and other risk models, the data inputs into the models, the decision rules, and the governance around the model results. In other words, the business judgment rule applies. *See* Discussion Draft, § 404(a).

15 Federal Reserve Consumer Compliance Handbook, Federal Fair Lending Regulations and Statutes Overview, *available at* https://www.federalreserve.gov/boarddocs/supmanual/cch/fair_lend_over.pdf.

16 *See Texas Dep't of Hous. and Cmty. Affairs v. The Inclusive Cmtys. Project, Inc.,* 135 S. Ct. 2507 (2015). *See also* Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460 (Feb. 15, 2013) (promulgating 24 C.F.R. § 100.500).

17 *Id.* at 24.

18 The GSE charters state that the GSEs must promote access to mortgage credit throughout the nation, including in central cities, rural areas, and underserved markets. The charters also state that GSEs can earn less of an economic return on mortgages to LMI families. Fannie Mae's charter is in Title III of the National Housing Act, 12 U.S.C § 1716 *et. seq.* Freddie Mac's charter is in 12 U.S.C. § 1451 *et. seq.*

19 A system with multiple guarantors and little regulatory oversight permits guarantors to chase the most lucrative markets and serve only particular regions or borrowers. This could have disastrous consequences for borrower access to credit as well as the ability of small lenders to compete on equal footing with large banks.

20 The GSEs are subject to goals covering the purchases of single-family and multi-family mortgages to low and very low-income families. *See* 12 U.S.C. § 4561.

21 The current system spreads the cost of protecting against another financial crisis more equitably among all borrowers that receive government-backed mortgages.

22 The fund possesses numerous limitations, including: it is operationally and politically difficult to enact or sustain; the fund only permits support to LMI borrowers, as opposed to borrowers with lower wealth (restricts access for people of color due to historical discrimination impacting credit scores and family wealth); there is greater subsidy in the current system; the current system is less costly; and the fund contains no enforceability mechanisms to ensure market participants are fulfilling their duties.

23 HUD and DOJ have strong enforcement authority under the Fair Housing Act to ensure fair housing, including in the sale of and securitization of mortgages. ECOA provides DOJ with additional enforcement authority to address pattern or practice discrimination. HUD, DOJ, and FHFA have a duty to Affirmatively Further Fair Housing under Title VIII. 42 U.S.C § 3608(d). Additionally, FHFA has strong regulatory oversight of the GSEs through the affordable housing goals, duty to serve regulation, approval authority over new product offerings, etc.

24 The "business judgment rule" makes it more difficult to challenge guarantors' decisions and their failure to serve underserved communities. Disparate impact claims would be undermined. Additionally, the regulator has no authority to review, challenge, or interfere with the guarantor's business judgment in developing its market access proposal or in determining actions it is willing to perform. The regulator also cannot require prior review or approval of the guarantor's proposal.

25 This is not a surprise given the perspective of the lead backers of the proposal. They have erroneously blamed affordable housing measures for causing the Great Recession, even though study after study shows that those loans were sound, performed well, and were not a cause of the crisis. For instance, in 2013, Sen. Mike Crapo stated: "Several prominent economists have criticized the affordable housing policies of the 1990s and early 2000s as a significant contributor to the financial crisis. They argue mandatory affordable housing goals forced Fannie Mae and Freddie Mac to lower underwriting standards, reach into the subprime market and ultimately take on more unsustainable risk." He further stated: "During the height of the housing bubble Fannie and Freddie began acting like highly-leveraged hedge funds… These combined actions harmed borrowers, homeowners and taxpayers through the creation of unsustainable mortgages." *Housing Finance Reform: Essential Elements to Provide Affordable Options for Housing,* Hearing Before the Comm. on Banking, Housing, and Urban Affairs, 113th Cong. (Nov. 7, 2013) (Statement of Sen. Mike Crapo), https://www.banking.senate.gov/public/index.cfm/republican-press-releases?ID=336518C7-D34C-B79C-745F-7AB7B19357FF. However, the Financial Crisis Inquiry Commission issued a 2010 report concluding: "Based on the evidence and interviews with dozens of individuals involved in this subject area, we determined that [the affordable housing goals] only contributed marginally to Fannie's and Freddie's participation in [risky mortgages]." Financial Crisis Inquiry Commission, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, at xxvii (2010), https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf. Furthermore, "none of Fannie Mae's 2004 purchases of subprime or Alt-A securities were ever submitted to HUD to be counted toward the goals." *Id.* at 123. Additionally, the Federal Reserve Bank of St. Louis determined that there was "no evidence that the affordable housing goals of the CRA or of the GSEs affected" the volume, pricing, and performance of securitized subprime mortgages originated in the sample studied. Rubén Hernández-Murillo, Andra C. Ghent, and Michael T. Owyang, Federal Reserve Bank of St. Louis, Did Affordable Housing Legislation Contribute to the Subprime Securities Boom? (March 2012), https://files.stlouisfed.org/files/htdocs/wp/2012/2012-005.pdf. Numerous other academic research studies have come to similar conclusions.

26 One that thankfully is much more remote in light of reforms including strong mortgage ability to pay standards and enhanced capital standards throughout the system instituted by the new regulator, FHFA.

27 The proponents' paper refers to the current G-fee pricing in terms of "cross-subsidy." This paper, for ease of comparison, follows that terminology, notwithstanding that the allocation of this capital cost is a regulator mandated formula in both systems, and the current system simply does it more equitably.

28 No Republican member of the House has publicly stated that they would support such a mechanism.

29 Parrott, *supra* note 2, at 4, assumption 8.

30 *See* Spreadsheet on Mortgage Rates Across the Credit Distribution in the Current and Future Multiple Guarantor System, Proposed System Chart, Row 44, Column N, https://www.economy.com/mark-zandi/documents/2018-02-12-Access-and-Affordability.zip. Underserved borrowers are borrowers with credit scores below 740 and loan-to-value ratios greater than 80%.

31 Using the proposed Market Access Fund for upfront payments would be challenging, especially as the fund is being established. As the fund is applied to new mortgage originations, in the early years it would generate far less than the ultimate projected $5.1 B, as it would only be applied to a portion of the outstanding mortgages, not the full market. If new mortgage originations equaled a fourth of the overall market, in the first year likely $1 billion or less would be available after payments to the trust funds, reducing the total amount available in the first year for targeted loans to approximately $1,000 from the existing MAF balance.

32 Calculated as the difference between the computed capital charge based on an ROE of 1620 and the actual capital charge.

33 Spreadsheet, *supra* note 30, Proposed System Chart, Row 44, Column N; Proposed System Chart, Row 82, Column N.

34 *Id.* at Row 82, Column N. Assumes a current system cross-subsidy of capital cost minus the sum of the implicit capitalization percent times an ROE of 1287 divided by 100. The multiplier used to determine current system capital costs for a 1287 ROE in 2001 by credit score and LTV are calculated as (4% implicit capitalization percent multiplied by 1287 ROE divided by 100)/actual capital charge in current system.

35 Jim Parrott and Laurie Goodman, *Making Sure the Senate's Access and Affordability Proposal Works,* Urban Institute (Feb. 2018), *available at* https://www.urban.org/research/publication/making-sure-senates-access-and-affordability-proposal-works.

36 Fannie Mae's HomeReady product is targeted to borrowers at 100% of area median income, or no income limit for low-income census tracts. See Fannie Mae, HomeReady FAQs (2018), *available at* https://www.fanniemae.com/content/faq/homeready-faqs.pdf. Freddie Mac's Home Possible product is targeted to borrowers whose annual income must be equal to or less than the area median income for the census tract where the property is located, except where the property is located in a designated "Underserved Area" or "High Cost" area. See Freddie Mac, Home Possible Income & Property Eligibility (2018), *available at* http://www.freddiemac.com/homepossible/requirements.html.

37 In 2001, the cross-subsidy in the current system was even greater. The actual computed capital charge of 113 (determined by multiplying the implicit capitalization rate of 7 by an ROE of 1620) resulted in current system cross-subsidy of 45.2, over twice the subsidy of 20 bps in the proposed system. *See* Spreadsheet, *supra* note 30, Current System Chart, Current System Row 68, Columns H multiplied by Row 4 Column B and Proposed System, Row 79, Column N.

38 *See* MGIC rate sheet, *available at* https://www.mgic.com/-/media/MGIC/PDFs/71-61284_bpmi_monthly_dec-2017.pdf?la=en.

39 For example, the proposed standard of counting the income of all borrowers on the deed can be gamed by not including all the occupants on the deed.

40 Sustainable Housing Finance: Private Sector Perspectives on Housing Finance Reform, Hearings before the Committee on Financial Services, House, 115th Cong. 3-4 (2017) (Testimony of Nikitra Bailey), *available at* http://responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-bailey-remarks-written-hfsc-subcommittee-housinginsurance-oct2017.pdf; National Consumer Law Center Racial Justice & Economic Opportunity Project, *Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination,* (May 2016), *available at* https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

41 All gains in black homeownership since the Fair Housing Act have been erased since 2000. *See* Laurie Goodman, Jun Zhu, and Rolf Pendall, *Are gains in black homeownership history?,* Urban Institute (Feb. 15, 2017), *available at* https://www.urban.org/urban-wire/are-gains-black-homeownership-history; Laurie Goodman, Alanna McCargo, and Jun Zhu, *A closer look at the fifteen-year drop in black homeownership,* Urban Institute (Feb. 13, 2018) *available at* https://www.urban.org/urban-wire/closer-look-fifteen-year-drop-black-homeownership. Additionally, Harvard's Joint Center for Housing Studies found that non-whites accounted for 60% of household growth from 1995–2015 and predicted that half of millennial households by 2035 will be non-white. Joint Center for Housing Studies of Harvard University, State of the Nation's Housing 2017, (2017), *available at* http://www.jchs.harvard.edu/research/state_nations_housing.

42 Center for Responsible Lending analysis of 2016 HMDA data.

43 Also, the projections of the costs and cross-subsidy of the current system assumes that all the market access fee proceeds other than trust fund payments would be used to cross subsidize mortgage rates. If the funds are used for down payment assistance, this would further increase the mortgage rates for targeted borrowers.

44 Discussion Draft, § 3(15)(G).

45 The proposed system provides for guarantors to enter contracts for use of the mortgage access fund, but the decision of the content of the guarantor's access plan and decision whether to use the fund is left to the business judgment of the guarantor. Staff Discussion Draft, §§ 504(a)(1)(B) and (b)(1).

46 Spreadsheet, *supra* note 30, Current System Chart, Rows 30, 31,71 and 72, Column E; Proposed System Chart, Rows 44, 45, 82, and 83, Column G.

47 Parrott, *supra* note 2, at 3, assumption 4.

48 Spreadsheet, *supra* note 30, Proposed System Chart, Assumptions, Row 5.

49 The paper justifies applying a higher required rate of return on its assumption that a future FHFA director would be hostile to maintaining the current government housing footprint. However, at the same time the paper assumes that a new FHFA director would embrace the new fully government backed guarantors and the affordable housing fund in the future system. *See* Parrott, *supra* note 2, at 3, assumption 1. A new director so inclined could just as easily undermine the same under the proposed system by raising capital levels for guarantors and through its allocation of market access funds. Indeed, the lynchpin of the proponents' pitch is that the regulator will aggressively support affordable housing programs through its use of the Market Access Fund, notwithstanding that the current administration has proposed gutting HUD's budget and its affordable housing efforts. *See* President's FY 2019 Budget, at 63, *available at* https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf. Given this history, it is certainly a risk that the administration will not, in fact, use the Market Access Fund to expand affordable housing.

50 Spreadsheet, *supra* note 30, Current System Chart, Row 33, Columns G and H.

51 Parrott, *supra* note 2, at 3, assumption 4.

52 Federal Housing Finance Agency, *Fannie Mae and Freddie Mac Single Family Guaranty Fees in 2016,* at 2-3 (Oct. 2017), *available at* https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/GFeeReport10172017.pdf.

53 It does this by adding in the current system cost a new "cost of funds." This cost is not currently incurred by the GSEs. There is a cost of funds for the future system as they are adding an additional debt level equal to 1.5% of guaranteed loans.

54 The paper argues that mortgage insurance companies have coverage for first loss coverage. Parrott, *supra* note 2, at 3. However, the amount of loss on any loan is also capped, making them less exposed to the severe losses seen with foreclosed houses selling at fire sale prices in the Great Recession.

55 Parrott, *supra* note 2, at 4.

56 Another additional cost of the proposed system is its required fee to Ginnie Mae for all mortgages. The proposal establishes this fee, with the current draft capping the charge at a 15 bps one-time fee on each loan. Staff Discussion Draft, § 102(b)(2). This fee is not included in the paper's analysis.

57 Barclays, *Implications of Possible GSE Reform for the MBS and CRT Markets* (July 14, 2017).

58 Agency MBS Weekly, January 19, 2018, Morgan Stanley Research.

59 The GSEs' multifamily financing has grown from $4.5 billion in 1990 to $57 billion in 2014. The GSEs provide an important counter-cyclical role in the multifamily market, financing 70% of all multifamily originations in 2008 and 2009. As private capital returned to the multifamily market, the share of GSE financed originations declined around 30%, slightly less than the pre-crisis market share. *See* Karan Kaul, *The GSEs' Shrinking Role in the Multifamily Market,* Urban Institute (April 2015), *available at* https://www.urban.org/sites/default/files/publication/48986/2000174-The-GSEs-Shrinking-Role-in-the-Multifamily-Market.pdf.

60 The National Multifamily Housing Council and the National Apartment Association project a demand of 4.6 million new apartment households by 2030—exceeding the projected construction of 3.15 million new units. *See* https://www.weareapartments.org/data (accessed 2/16/2018)

61 *See, e.g.,* Protecting American Taxpayers and Homeowners Act of 2013, H.R. 2767, 113th Cong. (2013); FHA Solvency Act of 2013, S. 1376, 113th Cong. (2013); *Federal Housing Administration: Implications of a $1.7 Billion Taxpayer Bailout,* Hearing Before the Comm. on Financial Services, 113th Cong. (October 29, 2013) (Opening Statement of Chairman Jeb Hensarling), *available at* https://financialservices.house.gov/news/documentprint.aspx?DocumentID=356934; Ben Lane, Hensarling: Health of FHA is "clear and present danger" to Economy, Housing Wire (Nov. 15, 2017), available at https://www.housingwire.com/articles/41830-hensarling-health-of-fha-is-clear-and-present-danger-to-economy.

62 Laurie Goodman et al., Housing Finance At A Glance: A Monthly Chartbook (March 2017), *available at* https://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-march-2017; Center for Responsible Lending, New HMDA Data Show Despite Growing Market, African Americans and Latinos Remain Underserved (2017) *available at* http://www.responsiblelending.org/research-publication/newhmda-data-show-despite-growing-market-african-americans-and-latinos-remain; Sustainable Housing Finance: Private Sector Perspectives on Housing Finance Reform, Hearings before the Comm. on Financial Services, 115th Cong. 7-9 (2017) (Testimony of Nikitra Bailey), *available at* http://responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-bailey-remarks-written-hfsc-subcommittee-housinginsurance-oct2017.pdf.

63 12 U.S.C. §§ 4581, 4631.

64 12 U.S.C. § 4635.

65 12 U.S.C. § 4541.

66 12 U.S.C. § 4541(b)(3).

67 The GSEs are required to price for full capitalization, but all the net revenue of the GSEs is swept each quarter, preventing the setting aside of this capital. The GSEs do have full reserves to cover losses through the business cycle.

68 Treasury and the FHFA have broad authority to impose requirements on the GSEs, as they hold warrants for nearly 80% of their shares. They can and should impose additional requirements as conditions to the Treasury line of credit.

69 It is unclear whether sufficient new guarantors would be started and capitalized; whether capital markets and investors would embrace the system; and whether it would provide effective mortgage access to the full country.

70 Laurie Goodman et al., Housing Finance At A Glance: A Monthly Chartbook (March 2017), *available at* https://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-march-2017; John Griffith, *The Federal Housing Administration Saved the Housing Market,* Center for American Progress (2012), available at https://www.americanprogress.org/issues/housing/report/2012/10/11/40824/the-federalhousing-administration-saved-the-housing-market/. This report cites data estimates from Moody's Analytics in October 2010; Sustainable Housing Finance: Private Sector Perspectives on Housing Finance Reform, Hearings before the Committee on Financial Services, House, 115th Cong. 15-17 (2017) (Testimony of Nikitra Bailey), *available at* http://responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-bailey-remarks-written-hfsc-subcommittee-housinginsurance-oct2017.pdf.

71 Joint Center for Housing Studies of Harvard University, State of the Nation's Housing 2017 (2017), *available at* http://www.jchs.harvard.edu/research/state_nations_housing.

72 Laurie Goodman, Alanna McCargo, and Jun Zhu, A closer look at the fifteen-year drop in black homeownership, Urban Institute (Feb. 13, 2018) *available at* https://www.urban.org/urban-wire/closer-look-fifteen-year-drop-lack-homeownership.

73 Rakesh Kochhar and Richard Fry, *Wealth inequality has widened along racial, ethnic lines since end of Great Recession,* Pew Research Center (2014), *available at* http://www.pewresearch.org/fact-tank/2014/12/12/racialwealth-gaps-great-recession/.

74 *Id.*

75 Ray Boshara and William Emmons, *Stark Disparities in Wealth Are Key in Discussions on Race in the United States,* Washington Post (2014), available at https://www.washingtonpost.com/opinions/policies-that-can-bootstrapthe-poor-out-of-the-wealth-gap/2014/12/30/3bf972a6-8f87-11e4-a412- 4b735edc7175_story.html?utm_term=.bfc010a14313.

76 *See* Shapiro et al., *The Roots of The Widening Racial Wealth Gap: Explaining the Black-White Economic Divide,* Institute on Assets and Social Policy (2013).

77 Includes a reduction in capital costs for the current system from 48.6 bps to 38.6 due to applying the same rate of return on capital to both systems: 10.17% after tax and 12.87% before tax. The slight difference in the resulting capital costs for the two systems is due to rounding in the spreadsheet and its use of the 2014 loan distribution for the somewhat different 2016 market.

78 Includes an in increase in the Mortgage Insurance Fund in the Proposed System from 10 bps to 20 bps due to the requirement of $60 billion as a contribution at the start of the fund for the 10 bps fee.

79 Includes a decrease in funding cost in the current system from 5.5 bps to 0 bps because the current 60 bps G-fee does not include this cost and the GSEs do not anticipate it in the future. The proposed system requires a cost of funds item as they are startups and they are also providing 1.5% of capital through long-term debt.

80 Includes a decrease in the return on capital held in the proposed system from 14.7 bps to 11.7 bps due to applying the same rate of return of capital held for the proposed system as the analysis assumes for the current system.

81 Includes an increase in the MBS spread in the proposed system from 70 bps to 80 bps due to the likely convergence of conventional and Ginnie pricing with full faith and credit guarantee of conventional loans. This is at the most generous range of estimates for the proposed system, and it does not include the increased cost to FHA borrowers.

National Urban League

www.NUL.org

The National Urban League works to provide economic empowerment, educational opportunities, and the guarantee of civil rights for the underserved in America. We started our Centennial Celebration in 2010 with a bold, nationwide call to action. We launched I AM EMPOWERED, an initiative focusing on four aspirational goals for empowering communities to achieve in education, employment, housing, and healthcare, the cornerstones of our approach.

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CRL Center for Responsible Lending

www.responsiblelending.org

The Center for Responsible Lending (CRL) is working to ensure a fair, inclusive financial marketplace that creates opportunities for all responsible borrowers, regardless of their income, because too many hard-working people are deceived by dishonest and harmful lending practices.

While the housing crash was devastating to families at all income levels, it was disproportionately destructive to entire communities of low- and moderate-income families and borrowers of color. In fact, it wiped out generations of family wealth in these communities. Many of these families had successful 30-year loans, but they were lured by the promises of deceptive marketing and then financially devastated when they were placed in egregious loan products.

CRL is a nonprofit, non-partisan organization that works to protect homeownership and family wealth by fighting predatory lending practices. Our focus is on consumer lending: primarily mortgages, payday loans, credit cards, bank overdrafts and auto loans.

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