



**National
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*Fighting Together
for Economic Justice*

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June 7, 2024

Director Sandra L. Thompson
Federal Housing Finance Agency
Constitution Center
400 Seventh Street, SW
Washington, DC 20219

**Re: Fannie Mae and Freddie Mac Equitable Housing Finance Plans
FHFA Request for Input**

Dear Director Thompson:

The National Consumer Law Center¹ respectfully submits the following comments on behalf of its low-income clients in response to the *Fannie Mae and Freddie Mac Equitable Housing Finance Plans Request for Input (RFI)*.² The Equitable Housing Finance Plans (EHFPs) developed by Fannie Mae and Freddie Mac (collectively, the Government-Sponsored Enterprises or GSEs) seek to identify and address barriers to sustainable housing opportunities for underserved communities. The RFI solicits public feedback to assist the GSEs in implementing their current plans and preparing plans in the future. We welcome the opportunity to weigh in on the EHFPs and commend the GSEs for their commitment to advancing equitable, accessible and affordable housing. We offer brief comments to strengthen the focus on equity, and the transparency and accountability of the plans.

¹ The National Consumer Law Center, Inc. (NCLC) is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of practice treatises on consumer credit laws and unfair and deceptive practices. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted trainings for thousands of legal services and private attorneys, and provided extensive oral and written testimony to numerous Congressional committees on various topics.

² Federal Housing Finance Agency, Request for Information: Fannie Mae and Freddie Mac Equitable Housing Finance Plans (Apr. 29, 2024), <https://www.fhfa.gov/sites/default/files/2024-05/EHFP-RFI-2024.pdf>.

In a nutshell, we recommend that the GSEs through the EHFPs:

- Further expand the use of Special Purpose Credit Programs to advance housing opportunities for borrowers of color and other historically underserved borrowers;
- Conduct further research and take action to stabilize heirs' property and reduce home loss in communities of color;
- Expand the definition of first-generation homebuyer; and
- Establish more transparency and accountability with respect to plan development and performance, and continue to improve and advance language access.

Further expand the use of Special Purpose Credit Programs to advance housing opportunities for borrowers of color and other historically underserved borrowers.

The GSEs' plans rightly focus on developing Special Purpose Credit Programs (SPCPs), identifying innovative programs in the market, and expanding liquidity for lender-originated SPCPs. SPCPs can be a powerful tool for closing the racial homeownership gap. The homeownership rate is 73 percent for white households, 51 percent for Latino households, and 44 percent for Black households.³ This persistent and enduring homeownership gap needs aggressive and multifaceted interventions. SPCPs allow for a race-conscious, targeted approach to increase homeownership opportunities for these historically underserved borrowers. The GSEs must aggressively deploy SPCPs in their plans and promote lender-sponsored SPCPs so more consumers can access and sustain homeownership in this challenging housing market.

The Equal Credit Opportunity Act (ECOA) and Regulation B allows creditors to create special purpose credit programs to extend credit to a class of persons who would otherwise be denied credit or receive it under less favorable terms, under certain conditions.⁴ For home loans, lenders most commonly created SPCPs for down payment and closing cost assistance for special or targeted populations. SPCPs also allow for more flexible underwriting standards, and enhanced or special servicing practices.

Though SPCPs have been available for more than 40 years, most programs were only created recently. Creditors initially expressed concerns about limited guidance from regulators regarding what is an acceptable special purpose credit program. However, regulatory guidance has increased, along with encouragement from federal regulators

³ See National Association of REALTORS® Research Group, 2023 Snapshot of Race and Homebuying in America (2023), <https://www.nar.realtor/sites/default/files/documents/2023-snapshot-of-race-and-home-buying-in-the-us-03-02-2023.pdf>; Urban Institute, Reducing the Racial Homeownership Gap, <https://www.urban.org/policy-centers/housing-finance-policy-center/projects/reducing-racial-homeownersh-ip-gap>

⁴ 15 U.S.C. § 1691(c); 12 CFR § 1002.8. Offered by for-profit organizations.

for creditors to establish the programs.⁵ A number of non-profit organizations have also stepped up to create SPCPs to expand housing opportunities for members of their community.⁶

The GSE's support of SPCPs in their respective plans is notable. Fannie Mae is supporting Twin Cities Habitat for Humanity of Minnesota's (TC Habitat) launch of a regional SPCP to increase Black homeownership rates through down payment assistance, financial education and coaching to help consumers prepare for homeownership.⁷ Fannie Mae will produce a white paper to summarize the design, implementation, and execution of the regional SPCP. Fannie Mae's goal is to support and learn from local initiatives addressing housing inequities and assess the potential to scale up that approach in other communities. This focus is in addition to Fannie Mae's HomeReady First mortgage SPCP, which offers down payment assistance, reduced closing costs, and expanded income eligibility.⁸

Freddie Mac, in its 2024 Equitable Housing Finance Plan, is supporting initiatives to promote its SPCP, BorrowSmart Access, which provides down payment assistance and financial education to consumers. Freddie Mac commits to providing liquidity by purchasing 10,000 lender-designed or Freddie Mac-designed SPCP loans.⁹ Within or outside the SPCP framework, Freddie Mac is also exploring the use of reserve funds to help borrowers maintain financial stability when they suffer a setback, especially related to climate-induced hardship.¹⁰ The company is also reevaluating its servicing policies to improve outcomes, particularly for Black and Latino borrowers.¹¹

These activities, particularly Freddie Mac's holistic approach, are laudable. **To address the critical, documented and unmet needs of underserved communities the GSEs should:**

- Continue to prioritize and provide support for SPCPs that call for a race-conscious approach that targets Black and Latino households, communities the GSEs have already identified as underserved;¹²

⁵ See, e.g., [Interagency Statement on Special Purpose Credit Programs under the Equal Credit Opportunity Act and Regulation B](#), February 22, 2022 CFPB Advisory Opinion, [86 Fed. Reg. 3762](#), Jan. 15, 2021; CFPB *Supervisory Highlights*, [81 FR 46652](#), 46656, July 18, 2016.

⁶ See, e.g., LISC San Diego, San Diego Foundation, Access Granted Homebuyer Program, available at <https://www.lisc.org/san-diego/homebuyers/>.

⁷ Fannie Mae, Equitable Housing Finance Plan 2024 at 38.

⁸ Fannie Mae Home Ready First, available at <https://singlefamily.fanniemae.com/originating-underwriting/mortgage-products/homeready-first>. See also, Fannie Mae Equitable Housing Finance Plans, 2024 at 21.

⁹ Freddie Mac Equitable Housing Finance Plan 2024 at 5.

¹⁰ *Id.* at 7.

¹¹ *Id.* at 8.

¹² See Fannie Mae, The Black Housing Journey, available at <https://www.fanniemae.com/media/46626/display>; Fannie Mae, The Latino Housing Journey, available at <https://www.fanniemae.com/media/46621/display>.

- Create or encourage the creation of SPCPs to address the lack of small dollar mortgages, and provide liquidity for lender-originated small dollar mortgage loans, including for repair and rehabilitation of homes;
- Finalize the definition of first-generation homebuyer, create a special purpose credit program for first-generation homebuyers, and provide liquidity for lender-originated first-generation loans;¹³
- Encourage lender-designed SPCPs, which allow for more flexible mortgage underwriting standards that produce loans that are sustainable, fairly priced, and expand home access to underserved communities;¹⁴
- Address the needs of limited English proficient (LEP) consumers by creating an SPCP or other pilot focused on in-language servicing for LEP consumers;
- Develop a SPCP or other pilot focused on servicing, that, in addition to outreach, counseling and monitoring, enhances loss mitigation practices and options on the back end to better serve low-income consumers and underserved communities, especially those that received a loan as part of an SPCP;¹⁵
- Finalize and launch the reserve fund proposal either through an SPCP or other pilot initiative, and consult with HUD-approved housing counseling organizations, consumer advocates and other stakeholders on the design of this initiative before launching the pilot.¹⁶

Of these itemized recommendations, the need for small-dollar mortgages is particularly acute. The lack of availability of small-dollar mortgages not only prevents underserved communities and communities of color from building wealth through homeownership, but also fuels predatory financing and speculation in these communities.¹⁷ The properties supported by small-dollar mortgages, whether for purchase or repair, are the last sources of affordable housing for low- and moderate-income families. Removing the systemic barriers that prevent the origination of these mortgages, and providing liquidity in this market will go a long way to promoting and preserving Black and Latino homeownership.

Outside of purchase money small-dollar mortgages there is a critical unmet need for loans to repair and rehabilitate homes in rural and low-cost markets. The housing stock in these communities tends to be older, with some vacant or abandoned homes in distressed neighborhoods.¹⁸ Rehabilitating and repairing these properties and getting them back on the market can provide a significant source of affordable housing for low-income consumers. Small-dollar renovation mortgages allow homeowners to

¹³ See Freddie Mac Equitable Housing Finance Plan 2024 at 9.

¹⁴ See Freddie Mac Equitable Housing Finance Plan 2024 at 5 (Freddie Mac will explore scalable new mortgage product offerings). See also, Fannie Mae Equitable Housing Finance Plans, 2024 at 21.

¹⁵ See Freddie Mac Equitable Housing Finance Plan at 8.

¹⁶ See *id.* at 7.

¹⁷ See Sabiha Zainulbhai, Zachary Blizard, et al. The Lending Hole at the Bottom of the Homeownership Market: Why Millions of Families Can't Get Small Dollar Loans, New America, November 2021.

¹⁸ Alanna McCargo et al., Small-Dollar Mortgages for Single-Family Residential Properties, Urban Institute, 2018 at 14.

maintain their homes and benefit from property price appreciation, and add rental units to help alleviate the affordable housing crisis. The GSEs should consider options for homeowners to improve and preserve their property in addition to the financing tools being evaluated for non-profits and mission-driven developers to rehabilitate properties.¹⁹

Further research and action is needed to stabilize heirs' property and reduce home loss in communities of color.

Heirs property is created when a property owner dies intestate and multiple heirs inherit the property but have not completed the probate process to clarify title. Title to the property remains in the name of the deceased former owner. If unresolved, dozens of heirs inherit an increasingly fractional interest in the property over successive generations. Without clear title, heirs are limited in their ability to manage their property, and are excluded from home repair programs, disaster relief funds and other important public benefits.²⁰ They are unable to sell their property at market rates, or obtain a mortgage, which can make them vulnerable to predatory investors, forced sales and loss of the property. Heirs face a heightened risk of mortgage foreclosure and property tax foreclosure due to exclusion from tax relief programs.²¹

Heirs property is disproportionately concentrated in communities of color. Discrimination, lack of access to the legal system and other structural barriers kept many Black property owners from drafting wills or creating estate plans. Native Americans, Latinos and other populations faced similar structural barriers.

Heirs property status threatens the physical and financial security of families. Protecting heirs property owners from losing their homes, and enjoying the full economic benefit of ownership should be a priority for the GSEs. Fannie Mae rightly focused its research on providing an estimate of the prevalence and impact of heirs' title issues across the United States.²² This is an important start. However, more research must be conducted to address the methodical and other challenges identified in that research. The GSEs need not and should not wait to begin taking action to address harms of heirs property while this research continues.

¹⁹ See Freddie Mac, Equitable Housing Finance Plan 2024 at 15. Freddie Mac's proposed purchase of Single-Family Closed-End Second Mortgages for existing Freddie Mac borrowers who wish to tap into their home equity via a second mortgage is a promising start. See 89 Fed. Reg. 29329 (April 22, 2024).

²⁰ National Consumer Law Center, Keeping it in the Family, Legal Strategies to Address the Challenge of Heirs Property and Prevent Home Loss, January 2024, available at

<https://www.nclc.org/wp-content/uploads/2024/01/Report-Heirs-Property-Keeping-it-in-the-Family.pdf>.

²¹ National Consumer Law Center, Property Tax Foreclosures, the Devastating Consequences and Recommendations for Prevention, August 2023, available at

https://www.nclc.org/wp-content/uploads/2023/08/202308_Property-Tax-Foreclosures-on-Heirs-Property.pdf.

²² Fannie Mae, A Methodological Approach to Estimate Residential Heirs' Property in the United States, December 2023, available at

<https://www.fanniemae.com/sites/g/files/koqyhd191/files/2024-04/heirs-property-research-report.pdf>.

A holistic approach is necessary to prevent the creation of heirs' property in the future and assist current owners with title issues. **To advance this important work, the GSEs as part of the plans should consider:**

- Expanding research on heirs property to document loss of land and homes to property tax foreclosure;
- Creating a special purpose credit program or other pilot initiative to provide the resources for heirs to buyout a co-owners' interest and consolidate ownership of the property;
- Requiring servicers of Fannie Mae and Freddie Mac owned mortgages to implement clear and legally compliant processes for communicating with potential successors in interest and ensuring that heirs and other successors have access to the full range of GSE loss mitigation options, including the Flex Mod;
- Adding discussion of heirs property and estate planning in consumer facing educational material;
- Amending the definition of "first generation homebuyers" to ensure that it is inclusive of homebuyers with fractional interests inherited due to heirs property, and defining heirs property; and
- Funding and supporting the education of housing counselors and other housing professionals on heirs property related issues; and

Importantly, the definition of "first generation homebuyers" developed by the GSEs does not account for the prevalence of heirs property, especially for consumers of color who may lack access to generational wealth. Specifically, the definition should be amended to ensure that the ownership interest referenced during the three-year look back period preceding the Note Date of the Mortgage does not include a fractional interest inherited due to heirs property. A definition of "heirs property" should also be added. We also support other commenters who recommend amending the definition to reflect that the ownership interest contemplated relates to properties located in the United States; to create a simple and streamlined verification process; and to ensure that borrowers whose parents lost a home to foreclosure during the three-year look back period are able to qualify as first-generation homebuyers as their parents are unlikely to have the ability to provide financial assistance.

Establish more transparency and accountability with respect to plan development and performance, and continue to improve and advance language access.

The FHFA is to be commended for finalizing its rule on fair housing, fair lending, and equitable housing finance. The rule establishes supervision authority for unfair or

deceptive acts or practices, and formalizes the requirement for lenders to collect, maintain, and report borrower language preference.²³

The FHFA will publish a narrative evaluation of each GSE's plan performance. This information provides an opportunity for the public to learn of plan achievements and areas for continued attention and improvement. However, additional steps are necessary to strengthen the plans and increase transparency and accountability. Implementing guidance should include plan development guidelines, which evaluate components of the plan and measure their success. The FHFA should publicly disclose the evaluation system with ratings and require the GSEs to report performance on each objective to allow stakeholders to properly measure the successes of the plans. It is crucial that the public has insight on plan performance and outcomes and benchmarks to track success. The GSEs should also engage a diverse group of key stakeholders, including fair housing and civil rights organizations, consumer advocates, rural housing advocates, and other communities to receive ongoing feedback on the plans, as outlined in the rule.²⁴ The plans should disclose these consultations.

With respect to borrower language preference, we encourage both GSEs to incorporate collection of borrower language preference as part of the mortgage servicing process, not just at origination, and for FHFA to work with the Consumer Financial Protection Bureau (CFPB) and U.S. Department of Housing and Urban Development (HUD) and others to mandate access to translated documents and oral interpretation through the life of the mortgage loan.

Conclusion

The creation of the GSEs equitable housing finance plans is a meaningful step forward in closing the racial homeownership gap and encouraging an equitable housing finance system. The GSEs should take steps to enhance and expand initiatives aimed at underserved communities, including through special purpose credit programs and other initiatives. The process of developing these plans should be transparent, public and include measurable goals aimed at advancing racial equity in the housing sector and addressing the needs of underserved communities.

We look forward to following up on these recommendations. For more information contact Odette Williamson, Senior Attorney and Director of the Racial Justice and Equal Economic Opportunity Project at NCLC at owilliamson@nclc.org.

²³ FHFA, Final Rule: Fair Lending, Fair Housing, and Equitable Housing Finance Plans, 89 Fed. Reg. 42768 (May 16, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-05-16/pdf/2024-09559.pdf>.

²⁴ See 12 CFR § 1293.24(b).