January 16, 2024

The Honorable Jerome Powell
Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Martin Gruenberg
Chair
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Michael Hsu
Acting Comptroller
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Re: Regulatory capital rule: Amendments applicable to large banking organizations and to banking organizations with significant trading activity
Federal Reserve: Docket No. R–1813
FDIC: RIN 3064–AF29
OCC: Docket ID OCC–2023–0008

Dear Chair Powell, Acting Comptroller Hsu, and Chair Gruenberg:

The National Fair Housing Alliance® (NFHA™)[1] and the undersigned civil rights, housing, and other advocacy organizations appreciate the opportunity to comment on the notice of proposed rulemaking (Proposed Rule) by the Board of Governors of the Federal Reserve System (Federal Reserve Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the Agencies) regarding the large bank regulatory capital rule.[2] We commend the Agencies for seeking input on this important topic and we hope that our comments below will help inform the Agencies' views.

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[1] The National Fair Housing Alliance® (NFHA™) leads the fair housing movement. NFHA works to eliminate housing discrimination and ensure equitable housing opportunities for all people and communities through its education and outreach, member services, public policy, advocacy, housing and community development, tech equity, enforcement, and consulting and compliance programs.

[2] Federal Reserve, OCC, FDIC, *Notice of Proposed Rulemaking: Regulatory Capital Rule: Amendments applicable to large banking organizations and to banking organizations with significant trading activity*, 88 Fed. Reg. 64028 (Sept. 18, 2023), https://www.govinfo.gov/content/pkg/FR-2023-09-18/pdf/2023-19200.pdf.

Background

On July 27, 2023, the Federal Reserve Board, FDIC, and OCC issued a Proposed Rule to implement the final phase of the Basel III standards and to revise the regulatory capital framework for banking organizations with total assets of $100 billion or more and their depository institutions subsidiaries (collectively, Large Banking Organizations) and banking organizations with significant trading activity.

Most controversially, the Proposed Rule would dramatically increase the amount of capital that Large Banking Organizations must hold against mortgages held in portfolio, including those with a loan-to-value ratio (LTV) of 80 percent or greater that carry Private Mortgage Insurance (PMI or MI).[3] The preamble to the Proposed Rule reasons that this approach is consistent with the current capital rule, "which does not recognize an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer) and also reflects the performance of private mortgage insurance during times of stress in the housing market."[4]

The Agencies did not provide any evidence of a fair lending analysis, but stated that they "are supportive of home ownership."[5] The Agencies "seek comment on how the proposed treatment of regulatory residential real estate exposures will impact home affordability and home ownership opportunities, particularly for [low-to-moderate income] borrowers or other historically underserved markets."[6]

As explained more fully below, NFHA and the undersigned organizations **strongly oppose** the proposed risk weights for mortgages that carry PMI. (We do not opine on the other parts of the rule at this time.) The Agencies should repeal this part of the Proposed Rule because:

- It is not appropriately aligned with credit risk,
- It is not consistent with the Agencies' obligations under the Fair Housing Act, and
- It is not good policy or good business.

[3] 88 Fed. Reg. at 64047.
[4] *Id*.
[5] *Id.* at 64048.
[6] *Id*.

Comments

The Proposed Rule Is Not Appropriately Aligned with Credit Risk

The Proposed Rule's requirements for mortgages that carry PMI are not appropriately aligned with credit risk because the risk weight is not required under the Basel III standards, the credit risk is already mitigated through the PMI, and the risk weight is not consistent with the approach of the Federal Housing Finance Agency (FHFA).

As depicted in the table below, the residential risk weights in the Proposed Rule far exceed the risk weights required under the Basel III standards and the current U.S. risk weights. The Proposed Rule did not properly analyze or explain why the U.S. proposal should exceed the international standards by as much as 20 percentage points, even with PMI.

Table: Proposed risk weights for regulatory residential real estate mortgages that are not dependent on the cash flows of the real estate

LTV	<50%	50.01-60%	60.01-80%	80.01-90%	90.01-100 %	>100%
Current U.S. Risk Weight	50%	50%	50%	50% (with PMI)	50% (with PMI)	50% (with PMI)
Basel III Risk Weight	20%	25%	30%	40%	50%	70%
U.S. Proposed Rule Risk Weight	40%	45%	50%	60%	70%	90%

Source: Mortgage Bankers Association[7]

Moreover, the proposed risk weights do not contain any analysis explaining why the Federal Reserve Board, FDIC, and OCC take a different view of credit risk with respect to PMI than FHFA, the regulator for the mortgage giants Fannie Mae and Freddie Mac (collectively, the Government-Sponsored Enterprises or GSEs). On January 19, 2023, FHFA revised the GSEs' Single-Family Pricing Framework to, among other things, decrease fees for creditworthy borrowers who have smaller down payments, but pose a decreased credit risk to the GSEs by

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[7] Mortgage Bankers Association, *Basel III Capital Proposal - MBA Summary* (Aug. 2023), https://www.mba.org/docs/default-source/policy/white-papers/mba_summary_of_bank_capital_proposal_august_2023-resi_cref_8-30-23.pdf?sfvrsn=efa961b8_1.

paying for PMI.[8] The Pricing Matrix below shows how the GSEs' fees decrease for higher LTV loans that carry PMI.

Purchase Money Loans – LLPA by Credit Score/LTV Ratio										
Credit Score	LTV Range Applicable for all loans with terms greater than 15 years									
	≤ 30.00%	30.01 – 60.00%	60.01 – 70.00%	70.01 – 75.00%	75.01 – 80.00%	80.01 – 85.00%	85.01 – 90.00%	90.01 – 95.00%	>95.00%	SFC
≥ = 780	0.000%	0.000%	0.000%	0.000%	0.375%	0.375%	0.250%	0.250%	0.125%	N/A
760 – 779	0.000%	0.000%	0.000%	0.250%	0.625%	0.625%	0.500%	0.500%	0.250%	N/A
740 – 759	0.000%	0.000%	0.125%	0.375%	0.875%	1.000%	0.750%	0.625%	0.500%	N/A
720 – 739	0.000%	0.000%	0.250%	0.750%	1.250%	1.250%	1.000%	0.875%	0.750%	N/A
700 – 719	0.000%	0.000%	0.375%	0.875%	1.375%	1.500%	1.250%	1.125%	0.875%	N/A
680 – 699	0.000%	0.000%	0.625%	1.125%	1.750%	1.875%	1.500%	1.375%	1.125%	N/A
660 – 679	0.000%	0.000%	0.750%	1.375%	1.875%	2.125%	1.750%	1.625%	1.250%	N/A
640 - 659	0.000%	0.000%	1.125%	1.500%	2.250%	2.500%	2.000%	1.875%	1.500%	N/A
≤ 639[1]	0.000%	0.125%	1.500%	2.125%	2.750%	2.875%	2.625%	2.250%	1.750%	N/A

Source: Fannie Mae[9]

That is, FHFA, which oversees the purchase of the vast majority of mortgages in the United States, determined that the credit risk to the GSEs decreased for mortgage loans with an LTV of 80 percent or greater, and, therefore, the guarantee fee should also decrease. On May 23, 2023, FHFA Director Sandra Thompson testified as follows with respect to loans with an LTV of 80 percent or greater with MI:

> *[T]his MI coverage absorbs first losses and reduces the total loss exposure of the [GSEs] because the approved insurance providers bear much of these losses in the event of default. Absent MI, the [GSEs] would assume a far greater proportion of the losses associated with defaults on these loans. For borrowers making a down payment smaller than 20 percent of the home's value, the costs of the required credit enhancement, such as MI, contribute to the overall cost of their loan. As such, any analysis of guarantee fees without consideration of MI or other credit enhancement costs is incomplete—both from the perspective of the borrower and from the perspective of the [GSEs].*[10]

Given that the Basel III framework does not require such high regulatory capital and that the purpose of PMI is to mitigate credit risk, which was carefully analyzed and acknowledged by

[8] FHFA, *FHFA Announces Updates to the Enterprises' Single-Family Pricing Framework* (Jan. 19, 2023), https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Updates-to-Enterprises-SF-Pricing-Framework.aspx.
[9] Fannie Mae, *Loan Level Price Adjustment Matrix* (May 17, 2023) https://singlefamily.fanniemae.com/media/9391/display.
[10] Testimony of Sandra L. Thompson, Director, FHFA, *Hearing on FHFA Oversight: Protecting Homeowners and Taxpayers before the U.S. House of Representatives Committee on Financial Services* (May 23, 2023), https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/FHFA-Director-Thompson-Testimony-before-HFS-Committee-20230523.pdf.

FHFA, it does not appear that the Agencies' Proposed Rule is based on a sound credit risk analysis.[11]

The Proposed Rule Is Not Consistent with the Agencies' Obligations under the Fair Housing Act

Even assuming that the Agencies' proposed risk weights for mortgages that carry PMI was justified by credit risk, there is no evidence to suggest that the Agencies mitigated fair lending risk and acted to affirmatively further fair housing, as required by law. The Large Banking Organizations are likely to pass the additional regulatory costs along to individual consumers, at a time when consumers are already burdened by high mortgage rates, steep home prices, and competition with all-cash investor purchasers. Furthermore, the change would layer on top of recent Federal Reserve Board's policies designed to mitigate the impact of COVID-19 that have not benefited the whole of the market equally. First, the COVID-19 housing boom helped existing homeowners see their home equity grow by $2.9 trillion as a result of the Federal Reserve Board's monthly $40 billion in agency mortgage-backed securities purchases.[12] Additionally, the Federal Reserve Board lowered the federal funds rate, which helped mortgage interest rates remain at historic lows and stimulated home purchasing and refinancing. However, Federal Reserve researchers found median Black and Latino mortgage borrowers accumulated significantly less equity; only six percent of Black borrowers and only nine percent of Latino borrowers refinanced, as compared to 12 percent of White borrowers.[13] These changes contributed to the Black/White wealth gap expanding by $20 trillion.[14] Finally, it seems likely that the proposed risk weights for mortgages would impede the development and implementation of Special Purpose Credit Programs (SPCP) because banks would hold additional unnecessary capital for SPCP loans held in portfolio. This would diminish the ability of Large Banking Organizations to make these vitally important mortgage loans and help close the racial wealth gap. It does not appear that the Agencies carefully analyzed the risk this Proposed Rule poses to historically underserved groups, such as consumers and communities of color.

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[11] *See also* Jim Parrott, Laurie Goodman, *Bank Regulators Are Taking Too Narrow a View of Mortgage Risk*, Urban Institute (Sept. 18, 2023), ("[The Proposed Rule] would take the capital that large banks are required to hold against these mortgages well beyond what is needed to cover the risk, reinforcing the decade-long retreat of banks from the mortgage market."), https://www.urban.org/urban-wire/bank-regulators-are-taking-too-narrow-view-mortgage-risk.

[12] *See* CoreLogic, *Homeowners Gained $2.9 Trillion in Equity in Q2 2021*, CoreLogic Reports, (Sept. 23, 2021) https://www.corelogic.com/press-releases/homeowners-gained-2-9-trillion-in-equity-in-q2-2021-corelogic-reports/.

[13] Kristopher Gerardi, Lauren Lambie-Hanson, and Paul Willen, *Racial Differences in Mortgage Refinancing, Distress, and Housing Wealth Accumulation during COVID-19*, Federal Reserve Banks of Atlanta, Philadelphia, and Boston (June 2021), https://www.atlantafed.org/-/media/documents/research/publications/policy-hub/2021/06/22/06-racial-differences-in-mortgage-refinancing.pdf.

[14] *See, Wells Fargo Rejected Half Its Black Applicants in Mortgage Refinancing,* Bloomberg (March 10, 2022), https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/#xj4y7vzkg.

There is no evidence in the preamble to the Proposed Rule to show that the Agencies conducted the disparate impact analysis required by the Fair Housing Act with respect to any portion of the Proposed Rule.[15] The Fair Housing Act applies to the Agencies and requires a thorough analysis to consider the extent to which this policy will have a discriminatory effect on consumers and communities of color. Moreover, to the extent that there is a discriminatory effect but legally sufficient justification, the Fair Housing Act requires the Agencies to consider and implement any available less discriminatory alternatives. With respect to the Proposed Rule's provisions for mortgages that carry PMI, it appears that a less discriminatory alternative is readily available as FHFA has determined that the credit risk of high-LTV mortgages is mitigated by the PMI. While we appreciate the Agencies' request for comment on this specific provision, the Agencies should have conducted a robust fair housing and fair lending analysis for the entire proposal.

An analysis conducted by the Urban Institute raises the concern that the Proposed Rule's provisions for mortgages that carry PMI would have a disparate impact on Black and Latino borrowers.[16] High-LTV mortgages are particularly important for first-time borrowers, especially borrowers of color who may have lower wealth due to centuries of discriminatory housing policies. In fact, the Urban Institute's research shows that 27 percent of all purchase loans and 26 percent of conforming loans made to Black and Hispanic borrowers had high LTV ratios, compared with 19 percent of all bank loans.[17] It is unclear why the Agencies would propose these capital increases to mortgages that carry PMI when these same agencies recently joined guidance encouraging lenders to originate Special Purpose Credit Programs,[18] which were designed to overcome the discriminatory policies that have created wide and persistent homeownership and wealth gaps.

In addition to conducting a disparate impact analysis, the Fair Housing Act requires the Agencies to affirmatively further fair housing, which would apply to provisions of the Proposed Rule that relate to housing and community development. The Fair Housing Act states:

> *All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the*

[15] *See* HUD Discriminatory Effects Rule, 24 C.F.R. § 100.500; *see also Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).

[16] Laurie Goodman, Jun Zhu, *Bank Capital Notice of Proposed Rulemaking: A Look at the Provisions Affecting Mortgage Loans in Bank Portfolios*, Urban Institute (Sept. 2023), https://www.urban.org/sites/default/files/2023-09/Bank%20Capital%20Notice%20of%20Proposed%20Rulemaking.pdf.

[17] *See id.*

[18] Federal Reserve Board, FDIC, OCC, National Credit Union Administration, Consumer Financial Protection Bureau, Department of Housing and Urban Development, Department of Justice, Federal Housing Finance Agency, *Interagency Statement on Special Purpose Credit Programs under the Equal Credit Opportunity Act and Regulation B* (Feb. 22, 2022), https://www.fdic.gov/news/financial-institution-letters/2022/fil22008a.pdf.

> *purposes of this subchapter and shall cooperate with the Secretary [of Housing and Urban Development] to further such purposes.*[19]

Each of the Agencies is a "Federal agency having regulatory or supervisory authority over financial institutions" and thus each has a duty under the Fair Housing Act to consider not just discriminatory impact of a policy but also how policies can be designed to affirmatively further fair housing in the United States. The U.S. Department of Housing and Urban Development (HUD) has rulemaking authority for the Fair Housing Act and defines "affirmatively furthering fair housing" as follows:

> *Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, and fostering and maintaining compliance with civil rights and fair housing laws....*[20]

There is no evidence in the record to suggest that the Agencies conducted any analysis of potential disparate impact or less discriminatory alternatives, or a means to affirmatively further fair housing for consumers and communities of color, as required by the Fair Housing Act.

The Proposed Residential Risk Weights Are Not Good Policy or Good Business

The Proposed Rule's provisions for mortgages that carry PMI are not good policy as the unnecessary burden of these additional costs will likely fall on those least likely to afford it and who suffer from historic and ongoing discrimination in the housing finance system. Homeownership has long been a key path into the middle class and economic security for families in America. Unfortunately, America's long history of discriminatory housing policies has created distinct advantages for White families, leading to massive homeownership, credit, and wealth gaps that persist today. For generations, the gap between the Black and White homeownership rates in the United States has remained wide and persistent, from 27 percentage points in 1960 to 29 percentage points in 2021.[21] Most alarmingly, this gap is larger than it was when race-based discrimination against homebuyers was legal. Similarly, White wealth has soared while Black wealth has remained stagnant. In 2022, White median family

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[19] 42 U.S.C. § 3608(d).
[20] 24 C.F.R. § 5.151.
[21] 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.

wealth was valued at $285,000, while Black families' median net worth was only $44,900.[22] Accordingly, the burden of additional mortgage costs will create yet another obstacle to Black and Latino homeownership.

Moreover, the Proposed Rule's provisions for mortgages that carry PMI will harm the economy. The vast majority of all projected future homebuyers will be borrowers of color.[23] Ensuring their access to safe and affordable mortgages is critical to maintaining a thriving national housing finance system. A study by Citigroup estimates that improving access to housing credit would have resulted in an additional 770,000 Black homeowners and $218 billion in sales and expenditures.[24] A Morgan Stanley study estimates that addressing racial disparities in homeownership could create nearly 800,000 jobs and generate $400 billion in tax revenue.[25] This analysis found that by not addressing housing inequality, nearly five million people have been denied homeownership opportunities. Yet another study found that eliminating racial inequities in the United States could add $5 trillion of growth to our GDP over the next five years.[26] The inequities in our markets and systems also stifle innovation, productivity, profitability, and economic progress.

Additionally, Large Banking Organizations already have mostly retreated from extending mortgage credit directly to consumers while nonbank lenders agency originations reached nearly 80 percent of mortgages in June 2023, leaving the mortgage market at risk. Nonbank lenders also continue to dominate the refinance market. Therefore, federal regulators should be taking steps to make it more likely that Large Banking Organizations will re-enter the mortgage market and ensure credit accessibility for all consumers and not just the wealthiest borrowers who can afford jumbo mortgage loans. Instead, the proposed requirements for residential mortgages will likely provide an additional reason for Large Banking Organizations to remain on the sidelines. Further, in the current rising rate environment, Large Banking Organizations are better suited to access diversified assets or emergency financing. Nonbank lenders have thin

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[22] Aditya Aladangady, Andrew C. Chang, Jacob Krimmel, *Greater Wealth, Greater Uncertainty: Changes in Racial Inequality in the Survey of Consumer Finances*, Federal Reserve Board FEDS Notes (2023) https://www.federalreserve.gov/econres/notes/feds-notes/greater-wealth-greater-uncertainty-changes-in-racial-inequality-in-the-survey-of-consumer-finances-20231018.html.

[23] *See* Laurie Goodman, Jun Zhu, *The Future of Headship and Homeownership*, Urban Institute (Jan. 22, 2021), https://www.urban.org/sites/default/files/publication/103501/the-future-of-headship-and-homeownership_0.pdf.

[24] *See* Citigroup, *In Pursuit of Equity: Why America's Future Depends on Closing the Racial Wealth Gap* (2021), https://www.nytimes.com/paidpost/citi/in-pursuit-ofequity.html.

[25] *See* Jeff Cox, *Morgan Stanley says Housing Discrimination Has Taken a Huge Toll on the Economy*, CNBC (Nov. 13, 2020), https://www.cnbc.com/2020/11/13/morgan-stanley-sayshousing-discrimination-has-taken-a-huge-toll-on-theeconomy.html#:~:text=Morgan%20Stanley%20says%20racial%20inequality,five%20million%20from%20owning%20homes.

[26] *See* Dana Peterson and Catherine Mann, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.*, Citi Global Perspectives and Solutions 3 (Sept. 1, 2020), https://www.citivelocity.com/citigps/closing-the-racial-inequality-gaps/.

cushions of capital and need substantial economies to scale. Also, many nonbank lenders are being impacted by the market's shift from a refinance market to a purchase market as it was cheaper for them to operate during the pandemic's refinance boom. Consumers seeking small dollar mortgages are feeling this problem acutely, especially those seeking to secure a mortgage for a home purchase in Midwest cities, such as Detroit. The lack of mortgage loan accessibility is leaving these consumers to rely on predatory products as there is a resurgence of contracts for deeds, especially among Latino and Black homebuyers with incomes less than $50,000.[27]

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Miscalculations about where credit risk actually lies and misguided actions to counter that perceived risk are counterproductive and will unnecessarily restrict mortgage access for creditworthy borrowers upon whom the future vitality of the mortgage market depends. We would welcome the opportunity to work with the Agencies and other stakeholders to ensure that the regulatory capital framework is effective and beneficial for all consumers and communities.

Thank you for considering our views.

Sincerely,

National Fair Housing Alliance
National Housing Conference
National Housing Resource Center
New Jersey Citizen Action

[27] *See Housing Finance at a Glance: Monthly Chartbook*, Urban Institute (July 2023), https://www.urban.org/sites/default/files/2023-07/Housing%20Finance-%20At%20A%20Glance%20Monthly%20Chartbook%20July%202023.pdf.