

May 12, 2023

The Honorable Sandra Thompson
Director
Federal Housing Finance Agency
400 7th Street SW
Washington, DC 20219

ATTN: Comments/RIN 2590-AB27, Enterprise Regulatory Capital Framework – Comingled Securities, Multifamily Government Subsidy, Derivatives, and Other Enhancements

Dear Director Thompson:

On behalf of the American Bankers Association, Housing Policy Council, Independent Community Bankers of America, and U.S. Mortgage Insurers, we are responding to one element of the Federal Housing Finance Agency's (FHFA) Notice of Proposed Rulemaking (NPR)¹ on enhancements to the Enterprise Regulatory Capital Framework (ERCF). Our members represent a wide range of housing finance stakeholders and GSE counterparties in both the primary and secondary mortgage markets, including lenders, servicers, and mortgage insurers. Our organizations are specifically concerned about the NPR's proposed change to the method for calculating a borrower's representative credit score once the GSEs migrate to the bi-merge credit report requirements.² We are worried that this change is premature, has significant credit policy implications, and would significantly benefit from a public engagement process that our organizations have previously requested.

Key Recommendations

Our organizations wish to raise two key issues and recommendations:

- 1) Loan-level GSE data spanning back to 1999 to support the bi-merge migration should be published sooner than the fourth quarter of 2023 to allow the necessary analysis and impact assessment, in accordance with standards of professional practice for model estimation, ahead of the proposed implementation in the first quarter of 2024.
- 2) FHFA should work closely with industry to fully assess operational and regulatory compliance considerations for mortgage market participants, including for the notices and disclosures required under and Fair Credit Reporting Act (FCRA).³

Proposed Timeline to Publish Classic FICO Historical Data Should Be Advanced

We view the incorporation of bi-merge requirements into the ERCF to be premature because the publicly announced timeline for GSE publication of Classic FICO historical data to support the change in credit score calculation is currently planned for the fourth quarter of 2023. Access to this data is imperative for industry stakeholders to assess the proposed methodology to determine a borrower's representative credit score and, generally, changes to credit score requirements necessitate extensive back testing to properly estimate performance projections and pricing. Without earlier access to this data, our industries are unable to provide meaningful and informed input on the FHFA's proposal to determine the representative credit score for single family mortgages by averaging the two scores used in the bi-merge

¹ 88 Fed. Reg. 15306 (March 13, 2023).

² Federal Housing Finance Agency, "FHFA Announces Validation of FICO 10T and VantageScore 4.0 for Use by Fannie Mae and Freddie Mac" (October 24, 2022). Available at <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Validation-of-FICO10T-and-Vantage-Score4-for-FNM-FRE.aspx>.

³ 15 U.S.C. 1681 *et seq.*

credit report. We collectively urge FHFA to direct the GSEs to release the Classic FICO historical data earlier than the fourth quarter of 2023 and request that the data for both the bi-merge Classic FICO and the new credit scoring models be made available at the loan level for the full GSE performance data set, which spans back to 1999, to ensure industry participants can conduct a comprehensive analysis of the upcoming changes.

Stakeholder Engagement on Operational and Regulatory Compliance Considerations

An example of a credit policy implication that must be considered and that would benefit from significant stakeholder engagement, which is short-circuited by this NPR proposal to average credit scores, is the bi-merge migration's impact on notices and disclosures required under FCRA. Several classes of market participants, most notably lenders, servicers, and mortgage insurers, issue notices to consumers during and after the mortgage origination process, and the NPR's proposed changes could impact the content of and processes for market participants' FCRA notices. FCRA requires that consumers be provided with a notification of "any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report"⁴ and further requires that these notifications contain, among other things, "all of the key factors that adversely affected the credit score; the date on which the credit score was created; and the name of the person or entity that provided the credit score."⁵ Moreover, "adverse action" is broadly defined and applies to credit or insurance denials, as well as increased insurance charges, based in whole or in part on a consumer report. The required disclosures reflect the consumer report that produced the score used as the representative credit score.

A bi-merge credit report process where the representative credit score is determined by averaging the two scores will impact how financial institutions meet FCRA notification obligations. Careful consideration, dialogue, and openness to input regarding this element of the migration would be tremendously beneficial to creating a smooth and seamless transition for industry and consumers alike. However, prematurely finalizing the NPR proposal to average credit scores could unnecessarily limit the policy options available.

The undersigned organizations appreciate the opportunity to comment on the FHFA's NPR for enhancements to the ERCF and our industries welcome robust engagement with FHFA and GSEs to best calibrate changes to the ERCF and mortgage market processes related to the upcoming bi-merge migration.

Sincerely,

American Bankers Association
Housing Policy Council
Independent Community Bankers of America
U.S. Mortgage Insurers

⁴ 15 U.S.C. 1681(a).

⁵ 15 U.S.C. 1681g(f)(1)(C)-(E).