



December 2, 2024

Clinton Jones  
General Counsel  
Federal Housing Finance Agency  
400 Seventh Street SW, Washington, DC 20219

**Re:** Comments/RIN 2590–AB23

Dear Mr. Jones:

The Housing Policy Council (HPC)<sup>1</sup> appreciates the opportunity to submit comments on the Federal Housing Finance Agency’s (“FHFA”) second proposal (the “Re-proposal”)<sup>2</sup> to amend its Suspended Counterparty Program (“SCP”) regulation.<sup>3</sup>

In contrast to FHFA’s initial proposal (the “NPR”),<sup>4</sup> the Re-proposal would retain the current procedures for imposing a proposed suspension rather than authorizing immediate suspension in certain cases. The Re-proposal also would avoid covering minor civil actions that do not pose a risk to the safety and soundness of the regulated entities.

HPC supports the retention of current suspension procedures. We also believe that the proposed dollar amount for relevant violations and other changes in the Re-proposal would assist in making more manageable the number of civil violations subject to the SCP regulation.

While we appreciate these substantive improvements to the proposal, we continue to have concerns with the rationale for the expansion of the SCP regulation to civil actions, as highlighted in our previous comment. However, if FHFA proceeds with this alteration, we recommend that the agency make the refinements to the Re-proposal that are described below. HPC believes that addressing the following matters would better target the civil actions that are of concern to FHFA, consistent with the objectives of the SCP regulation.

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<sup>1</sup> HPC is a trade association comprised of the nation’s leading mortgage lenders, servicers, mortgage insurers, and title and data companies. HPC advocates for the mortgage and housing finance interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promoting of lending practices that create sustainable home ownership opportunities leading to long-term wealth-building and community-building for families.

<sup>2</sup> 89 Fed. Reg. 79785 (October 1, 2024).

<sup>3</sup> 12 C.F.R. Part 1227.

<sup>4</sup> 88 Fed. Reg. 47044 (July 31, 2023).

*Refine the definition of a “prohibition order” to clarify that it does not include cease-and-desist orders and other similar orders.*

In the Re-proposal, a prohibition order is defined as an order issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Consumer Financial Protection Bureau, the Securities and Exchange Commission, or the Commodity Futures Trading Commission that that *has the effect of prohibiting* a person from participating in an activity within the jurisdiction of the agency.

Each of these agencies has the authority to issue various forms of orders that would *have the effect of prohibiting* certain activities, and such orders are issued with some frequency. For example, the Federal banking agencies have the authority to issue cease-and-desist orders that prohibit a bank from engaging in certain activities,<sup>5</sup> and the Consumer Financial Protection Bureau has the authority to issue orders that “limit the activities or functions” of a person.<sup>6</sup>

In order to prevent the SCP regulation from applying to a great variety of actions that have no bearing on safety and soundness of the regulated entities or housing finance, we recommend that FHFA clarify that a prohibition order is an order that temporarily or permanently bars an individual or entity from participating in an industry subject to the jurisdiction of the relevant agency and does not include a cease-and-desist order or similar order.

*Clarify that the provision related to civil money penalties does not apply to penalties that are “accepted” by HUD, USDA, or VA.*

In our search for civil money penalties issued by the U.S. Department of Housing and Urban Development (“HUD”), U.S. Department of Agriculture (“USDA”), or U.S. Department of Veterans Affairs (“VA”), we found two recent cases in which HUD “accepted” multimillion dollar settlements of False Claims Act violations brought by the Department of Justice (“DOJ”).<sup>7</sup> FHFA should clarify that the “acceptance” of a penalty by HUD, USDA, or VA that is imposed by another agency is *not* a civil money penalty order as defined in section 1227.2.

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<sup>5</sup> 12 U.S.C. § 1818.

<sup>6</sup> 12 U.S.C. § 5565(a).

<sup>7</sup> Department of Housing and Urban Development, Notice of Mortgage Review Board Administrative Actions, 89 Fed. Reg. 22168 (May 29, 2024) (“On November 21, 2022, the Board voted to *accept* a False Claims Act settlement agreement between the United States and Academy Mortgage Corporation [and] to accept a False Claims Act settlement agreement between the United States and Movement Mortgage, LLC.”)

*Confirm that the suspension of a particular individual or entity does not automatically subject any affiliate company to suspension.*

Firms that engage with regulated entities often are part of larger organizations. To avoid any potential confusion over the scope of the SCP regulation, we recommend that FHFA explicitly affirm in the regulatory text that the suspension of a particular individual or entity does not automatically subject any affiliate company to suspension.

*Clarify the scope and application of the covered misconduct in connection with the ownership or management of real property.*

While HPC understands the desire to address violations or misdeeds by parties doing business with its regulated entities through adverse conduct in the “ownership or management of real property,” we recommend that FHFA provide additional guidance on the scope and application of this provision.

Owners of real estate and those providing services for managing properties can encompass thousands of businesses ranging from cleaning services, construction firms, appraisers, local government officials, exterminators, lawyers, HVAC services. The Re-proposal, however, does not address whether all or some of these activities would be covered. In particular, managing real property could be interpreted narrowly to cover a building manager for a multifamily property or condominium or it could be interpreted expansively to cover the hundreds of providers of services related to direct managing or contributing secondary support for managing real property, including acquiring, maintaining, or selling such properties.

To provide additional clarity around the scope and application of ownership or management of real property, we recommend that FHFA –

- Provide a definition of “ownership” and “management” of real property that identifies what parties and what type of conduct are contemplated to fall within the scope of the SCP regulation. For example, would a suspension order be applicable in the case of misconduct of a shareholder of a company subject to a civil penalty? Further, what type of involvement is substantial enough to have a material impact on FHFA’s regulated entities and therefore be covered by the regulation?
- Provide examples of what would trigger a suspension. For instance, an information service firm providing input to the property owner and to regulated entities that violates a privacy requirement could fall within or outside FHFA’s concerns based on some determining factor or factors.
- Delineate what, if anything, constitutes management misconduct that relates to the portfolios of the regulated entities, as contrasted to misconduct by an entity that

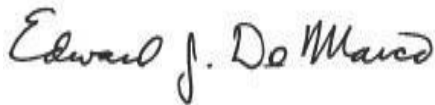
does not routinely interact with the regulated entities but does provide third- or fourth-party services to a vendor to a regulated entity.

- Clarify that suspending a particular individual or subsidiary of a company does not automatically invoke suspension of the firm itself. For example, many firms provide multiple services to companies owning or renting properties with ties to the regulated entities. A violation by one such service should not trigger suspension of other affiliates or the firm as a whole, absent some ongoing, significant violations across such a firm.

In sum, HPC believes that more narrowly defining the civil violations related to real estate ownership and management would provide clarity for the private sector doing business with FHFA's regulated entities. It is important that the regulatory text be explicit, to establish a streamlined and delimited program for the Agency's administration.

In closing, I want to reiterate that HPC appreciates that this new proposal reflects FHFA's receptivity to the public input provided by HPC and others. We thank the agency for this and offer the additional refinements outlined above as further enhancements to improve the clarity and focus of the Suspended Counterparty Program to target bad actors and protect the FHFA's regulated entities. If you have any questions on these comments, please contact me at [Edward.DeMarco@housingpolicycouncil.org](mailto:Edward.DeMarco@housingpolicycouncil.org) or 202-589-1922.

Yours truly,

A handwritten signature in black ink that reads "Edward J. DeMarco". The signature is written in a cursive style with a large initial "E".

Edward J. DeMarco  
President  
Housing Policy Council