

United States Senate

WASHINGTON, DC 20510

May 1, 2023

The Honorable Gene Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Comptroller Dodaro:

On January 19, 2023, the Federal Housing Finance Agency (FHFA) issued a press release titled “FHFA Announces Updates to the Enterprises’ Single-Family Pricing Framework”¹ which elaborated upon guidance that the FHFA previously provided in January² and October³ 2022. We write to seek your determination of whether the aforementioned guidance constitutes a “rule” for the purposes of the Congressional Review Act (CRA).

With limited exceptions, the CRA defines a “rule” as follows:

*‘[R]ule’ means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing[.]*⁴

Based upon this broad definition, the Government Accountability Office (GAO) has rightly pointed out that “agency pronouncements may be rules within the definition of 5 U.S.C § 551, and the CRA, even if they are not subject to notice and comment rulemaking requirements under section 553.”⁵ Similarly, the GAO has noted that general statements of policy that by definition are not legally binding are rules under the CRA as well.⁶

¹ FHFA Press Release, available at

<https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Updates-to-Enterprises-SF-Pricing-Framework.aspx>

² FHFA Press Release, available at

<https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Targeted-Increases-to-Enterprise-Pricing-Framework.aspx>

³ FHFA Press Release, available at

<https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Targeted-Pricing-Changes-to-Enterprise-Pricing-Framework.aspx>

⁴ 5 U.S.C § 804(3); 5 U.S.C. § 551(4).

⁵ B-323772, Sept. 4, 2012.

⁶ See B-329129, Dec. 5, 2017.

Though the FHFA did not pursue notice and comment, the guidance appears to be generally applicable within its intended range, prospective in nature, and designed to implement, interpret, or prescribe law or policy. For these reasons, we respectfully request that you evaluate whether or not the guidance is a "rule" under the CRA. Because the FHFA is currently applying the guidance, with significant consequences for borrowers, housing finance markets, and others, please respond determinatively by August 1, 2023, regardless of whether the opinion's issuance would occur during a congressional recess.

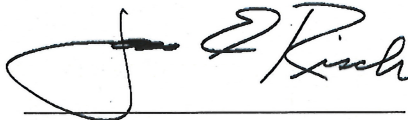
Sincerely,



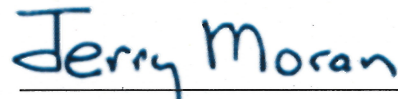
Thom Tillis
United States Senator



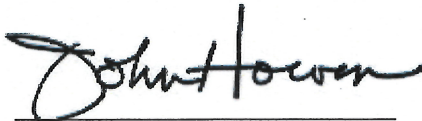
Mike Crapo
United States Senator



Jim Risch
United States Senator



Jerry Moran
United States Senator



John Hoeven
United States Senator



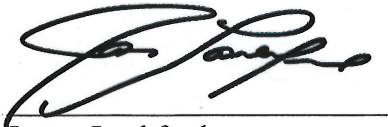
Marco Rubio
United States Senator



Ron Johnson
United States Senator



Bill Cassidy, M.D.
United States Senator



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United States Senator



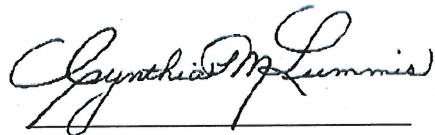
M. Michael Rounds
United States Senator



Kevin Cramer
United States Senator



Mitt Romney
United States Senator



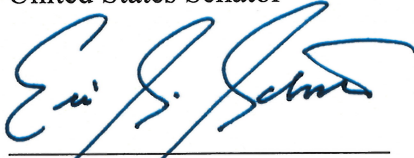
Cynthia Lummis
United States Senator



Roger Marshall, M.D.
United States Senator



Ted Budd
United States Senator



Eric Schmitt
United States Senator



Katie Boyd Britt
United States Senator