Americans for Financial Reform Education Fund

Ms. Julia Gordon
Office of the Assistant Secretary for Housing
Federal Housing Commissioner
Federal Housing Administration
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410,

September 16, 2024

Re: Single-Family Loan Sale Program; Proposed Rule 24 CFR Parts 203, 206, and 291; Docket No. FR-6051-P-02

Dear Assistant Secretary Gordon:

Americans for Financial Reform Education Fund (AFREF) appreciates the opportunity to comment on the Department of Housing and Urban Development (HUD) proposed Single Family Home Sales Program rule.[1] The proposal provides a much-needed, improved framework for HUD's ongoing note sales, incorporating many procedural improvements that Americans for Financial Reform Education Fund and our fellow housing and consumer justice advocates have called for. We appreciate these improvements, which will improve outcomes for homeowners impacted by the note sales along with their communities. Nonetheless, the program still serves as a means for private equity and other private institutional investors to acquire single-family housing, reducing affordable homeownership opportunities for owner-occupants and fueling the corporate consolidation of housing in the United States.

AFREF is a nonpartisan, nonprofit coalition of more than 200 civil rights, community-based, consumer, labor, business, investor, faith-based and civic groups, along with individual experts. Our mission is to fight to create a financial system that deconstructs systemic racism and inequality and promotes a just and sustainable economy. Homeownership can be a critical pathway to build household and generational wealth and provide family stability, but Black, Latine, and indigenous families have faced severe barriers to homeownership and home

[1] U.S. Department of Housing and Urban Development (HUD). Federal Housing Administration (FHA): [Proposed Rule. Single Family Sale Program]. 89 Fed. Reg. 136. July 16, 2024 at 57798 et seq.

purchase mortgage credit because of the legacy of redlining and lending discrimination. The proposed rule helps redress some important barriers to homeownership for lower-income, Black, Latine, and other disadvantaged families and communities.

The proposed rule makes a number of needed improvements:

- **Requiring Pre-Sale Notice:** The rule requires pre-sale notice to borrowers, who must be notified that their loan may be sold to a buyer who is not bound by Federal Housing Administration (FHA) servicing regulations, and gives borrowers the ability to dispute this sale.
- **Requiring Post-Sale Loss Mitigation:** The rule requires note purchasers to provide loss mitigation options that are as or more generous than those offered by the FHA, meaning that borrowers in financial hardship whose notes have been sold will still have access to reasonable loss mitigation methods.
- **Promoting Homeownership and Affordable Housing:** The rule enhances mechanisms to allow owner-occupants, nonprofit organizations, and government entities to obtain notes. This includes a first-look sale requirement for purchaser-held real estate owned property resulting from foreclosure or deed-in-lieu of foreclosure of a loan.

These improvements are necessary because previous iterations of HUD note sale programs have caused serious harm to impacted homeowners and their neighborhoods, especially since the sales were expanded in 2012 under the Distressed Asset Stabilization Program. Despite requiring FHA mortgage servicers to comply with HUD loss mitigation regulations before making insurance claims on notes, borrowers and advocates regularly reported that homeowners had their loans sold without notice while they were participating in the FHA loss mitigation process.[2] As a result, HUD wrongly paid out insurance claims to FHA servicers who had not properly complied with FHA loss mitigation regulations and then placed FHA borrower mortgages in the hands of investors who then denied homeowners reasonable loss mitigation options. A 2017 report from the HUD Office of the Inspector General found that 26 of 90 statistically sampled FHA insurance claims had significant servicing deficiencies.[3] These practices caused unknown numbers of avoidable foreclosures and allowed private equity firms and other private institutional investors to acquire a disproportionate number of notes and, ultimately, single family homes.

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[2] National Consumer Law Center. "Opportunity Denied How HUD's Note Sale Program Deprives Homeowners of Basic Benefits of Their Government-Insured Loans." May 2016.

[3] HUD., Office of Inspector General (OIG) (HUD OIG 2017). "HUD Did Not Have Adequate Controls To Ensure That Servicers Properly Engaged in Loss Mitigation." Report No. 2017-LA-0004. September 14, 2017 at 4. https://www.hudoig.gov/sites/default/files/documents/2017-LA-0004.pdf.

Private Equity, Institutional Investors, and FHA's Note Sales Programs

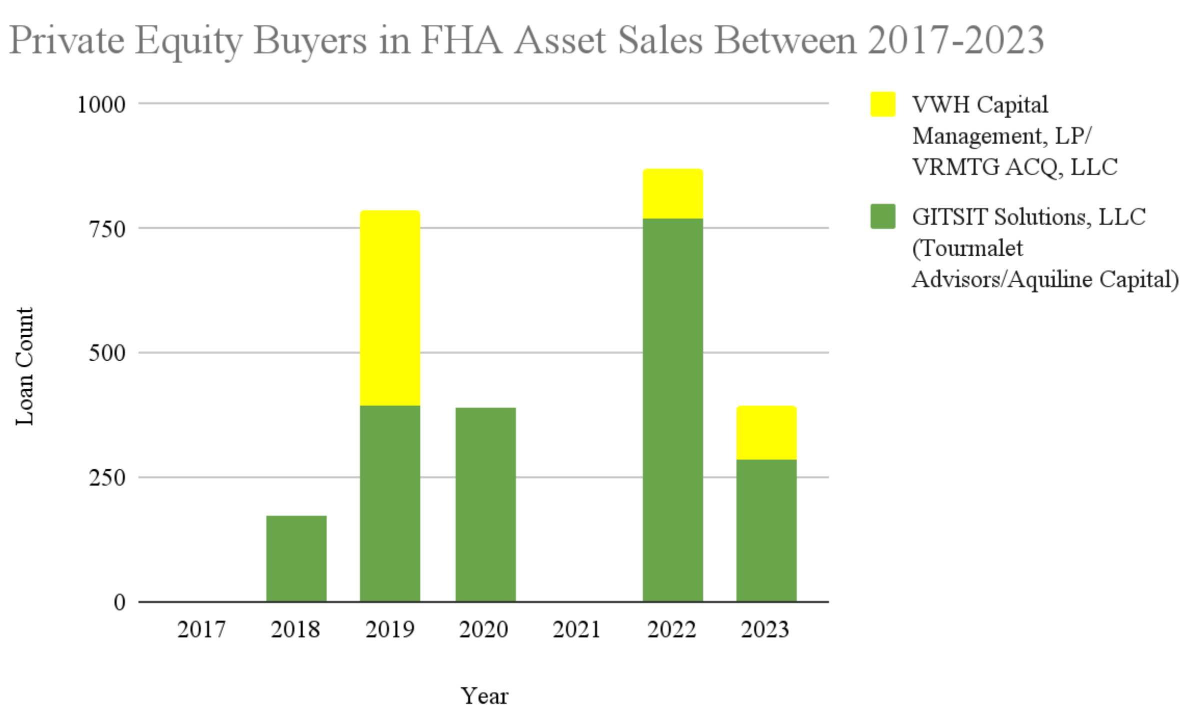
In recent years, the FHA has pivoted to selling more loans to nonprofits and community-based actors, who are best positioned to keep people in their homes.[4] Nonetheless, FHA continues to sell loans to institutional investors, and especially to private equity firms that have been repeat buyers,[5] including VWH Capital and GITSIT Solutions, who together purchased nearly 400 loans just last year.[6] For private equity firms, these foreclosures can translate into more profits from the rental market, where these firms and other investors are tightening their control on apartments and single-family homes.

Through the HUD-held Vacant Loan Sales (HVLS) program, institutional investors have bought about 70 percent (7,030 loans) of the total number of loans (9,895 loans) sold from all HUD sales conducted between 2017 and 2023.[7] During this period, private equity firms bought 2,607 loans, or over one-quarter of all loans.[8] Though the HVLS note sales have been a small share and number of the total FHFA note sales programs, private equity firms still purchased a sizable number of loans sold.[9] Since the FHA's data on the HVLS program is not as detailed as the FHFA report, the actual dollar value or sale amount for these loans is unknown. Cumulatively, institutional investors bought loans from 39 different pools across 9 sales during the period of the program report; private equity firms bought from 16 different pools across 7 sales.[10]

[4] HUD. Asset Sales Office. Federal Housing Administration (FHA). "Report to the Commissioner on Post Sale Report Library." March 2024.
[5] *Ibid*.
[6] *Ibid*.
[7] *Ibid*.
[8] *Ibid*.
[9] *Ibid*.
[10] *Ibid*.

Table 1. Private Equity Ownership of Home Loans under FHA Asset Sales Program				
Buyer	**Total Loan Count at Settlement**	**Number of Pools Purchased**	**Estimated Number of Homes Lost[11]**	**Median Home Loan Loss Rate**
GITSIT Solutions, LLC (Formerly known as Kondaur)	2015	10	752	35.5%
VWH Capital Management, LP/ VRMTG ACQ, LLC	592	4	398	59.4%
Grand Total	**2607**	**14**	**1150**	**47.5%**

Source: Federal Housing Administration, Office of Asset Sales (March 2024)



Source: Federal Housing Administration, Office of Asset Sales (March 2024)[12]

[11] The calculation involved multiplying the total foreclosure rate (foreclosure plus deed-in-lieu) by the loan count for each private equity and private equity-associated pool; then, the products were aggregated by corresponding buyer.
[12] There were no sales for 2021.

Racial Justice and HUD Note Sales Programs

Because of our country's history of racist housing policies and practices and our resulting racial wealth gap, Black and Latine homeowners are disproportionately impacted by HUD note sales.[13] Black and Latine homebuyers are more likely to use FHA mortgages to purchase their home, and were significantly more likely to experience mortgage default and foreclosures as a result of the 2008 subprime mortgage crisis.[14] Thus, HUD note sales are overly concentrated in the same Black, Indigenous, People of Color (BIPOC) communities that have been subject to centuries of racist, extractive housing policies and practices by federal, state, and local governments, financial institutions, and Wall Street investors. It is not coincidental that institutional investors are currently targeting these neighborhoods as part of their general housing acquisition strategies: the single-family rental industry disproportionately buys single-family homes in predominantly Black neighborhoods.[15] Research from the Atlanta metropolitan area found that Black residents have lost over $4 billion in home equity over 10 years due to these investors.[16]

The concern with the disproportionate sale of these homes to private equity firms arises from the industry's notoriously aggressive and risky investment strategies. Most private equity firms leverage large amounts of debt to finance investments and other financial transactions; these firms often use assets as collateral in the event of financial distress or default.[17] Furthermore, this risk of debt, coupled with investor pressures, usually results in private equity firms operating on a short time horizon for return on investment.[18] The contrast between private equity's short-term focus and the long-term stability of homeownership may compromise housing security for homeowners and tenants nationwide.

Previous research from Americans for Financial Reform Education Fund illustrates private equity's predatory practices when they acquire single- or multi-family housing, including inflated rent prices, excessive fees, and the aggressive pursuit of evictions.[19] Private equity's property takeovers notoriously lead to a decline in housing quality, such as poor property

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[13] Haberle, Megan and Jorge Soto. Poverty & Race Research Action Council and National Fair Housing Alliance. Report to the U.N. Committee on the Elimination of Racial Discrimination. "Continuing Lack of Progress in United States Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination." July 2014 at 11.

[14] Gruenstein Bocian, Debbie, Wei Li, and Keith S. Ernst. Center for Responsible Lending. "Foreclosures by Race and Ethnicity: The Demographics of a Crisis." June 18, 2010.

[15] An, Brian Y. "The Influence of Institutional Single-Family Rental Investors on Homeownership: Who Gets Targeted and Pushed Out of the Local Market?" *Journal of Planning Education and Research.* June 5, 2023.

[16] *Ibid*.

[17] Morran, Chris and Daniel Petty (Moran and Petty). "What Private Equity Firms are and How They Operate." *ProPublica.* August 3, 2022.

[18] *Ibid*.

[19] Americans for Financial Reform (AFR). "Estimate of Private Equity Ownership of Housing Units." June 28, 2022 at 6 to 8.

maintenance and inefficient administration, to boost profit margins.[20] The private equity model encourages fast and aggressive methods of profit-making because firms rely on high amounts of debt to finance their asset takeovers.[21] Private equity's property takeover allows these firms to profit heavily by imposing high rents and fees and neglecting housing quality upkeep. As of June 2022, private equity-owned property was rented by an estimated 1.6 million families, which include over one million apartment units, over 275,000 manufactured home lots, and over 239,000 single-family rental homes.[22]

The increased private equity dominance of the single-family-rental industry, which is heavily backed by many of the same private institutional investors who participate in HUD's note sale programs, negatively impacts homeownership, particularly for aspiring first-time homebuyers. As private equity and hedge funds have continued to buy single family homes and convert them into rental properties, would-be homebuyers have found it increasingly difficult to find homes they can afford and report difficulty competing with all-cash investor-buyers.[23]

Private equity firms have also been found to use arbitrary measures when offering home loan loss mitigation programs to homeowners, in manners that may violate FHA servicing requirements. For instance, VWH Capital Management, a repeat winner of FHA note sales, employs a data scientist to scrape job sites like LinkedIn and Monster.com to assess borrowers' "job security" in order to determine when to pursue loan modification or foreclosure.[24] This arms-length approach does not consider extenuating financial circumstances in borrowers' lives, types of wealth not associated with borrowers' employment conditions, reproduces algorithmic racism, and does not even involve a conversation with an actual person.

Recommendations

We support the elements of this proposed rule that advance procedural protections for FHA borrowers impacted by note sales. HUD should take further measures to address the role note sales play in the acquisition of housing by private equity and the increased corporate consolidation of the U.S. housing market generally.

HUD must ultimately aim to end the practice of selling FHA notes to private equity firms, hedge funds, real estate investment trusts, and other Wall Street investors and instead focus on ensuring that homes remain in the hands of owner-occupied families, governmental entities,

[20] Vogell, Heather. "When Private Equity Becomes Your Landlord." *ProPublica.* February 7, 2022.
[21] Morran and Petty.
[22] AFR at 1.
[23] Horowitz, Ben and Libby Starling. Federal Reserve Bank of Minneapolis. "Rise in investor-owned single-family rentals prompts policy responses." March 27, 2024.
[24] VWH Capital Management. "NEPC Hedge Fund Team Investment Due Diligence Report." *Hartford City Treasurer*. September 2021 at 14.

and mission-driven, non-profit organizations, whose aim is to keep people in their homes or, in the event of a foreclosure, keep homes affordable to the community through land trusts and other options.

If private investors continue to purchase loans, strong enforcement of borrower protections is necessary, along with requiring and publicly reporting more data about the program, including long-term outcomes of sales and loss mitigation guidelines. We additionally recommend the following:

- **Require note purchasers to publish their loss mitigation guidelines:** The FHA requires insured lenders to publish their loss mitigation standards. It is unacceptable for borrowers to lose access to these standards through a note sale and then not know what loss mitigation standards are currently available to them. Without access to these guidelines, borrowers and their advocates will be unable to effectively challenge denials and other errors, thus leading to avoidable foreclosures.
- **Ensure strong loss-mitigation enforcement:** In 2023, a HUD inspector general review of FHA loans found that nearly half of sampled FHA borrowers did not receive the correct loss mitigation assistance from their lender.[25] Poor servicer compliance with existing FHA loss mitigations guidelines is a known systemic problem, and servicing deficiencies have also been documented in mortgages submitted for insurance claims.[26] Thus, it is essential that FHA develop effective, proactive enforcement mechanisms to ensure that note purchasers are complying with their loss mitigation obligations. Enforcement mechanisms must not rely on self-certification by purchasers. Additionally, purchasers who violate their contractual obligations to the FHA must face serious consequences, including bans from future note sales and civil prosecution.
- **Adopt comprehensive requirements for post-sale servicer reporting:** The proposed rules maintain the current standard of four years of outcome data. This is an insufficient period of time to properly assess program outcomes. Rather, buyers should be required to report on the outcomes of all loans or properties that they or related entities still control, including loans that are already resolved. Additional data should include the number of loss mitigation approvals and denials, and racial and other demographic data about impacted homeowners to ensure that HUD's program complies with its obligation to affirmatively further fair housing. Finally, this information should be made public and updated regularly.

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[25] HUD OIG. "Servicers Generally Did Not Meet HUD Requirements When Providing Loss Mitigation Assistance to Borrowers With Delinquent FHA-Insured Loans." Report No., 2023-KC-0005. June 13, 2023 at 3. In addition to the analysis of the entire FHA portfolio, HUD OIG made similar findings with respect to a specific servicer.
[26] HUD OIG 2017 at 4.

- **Provide more detailed data on note pools**: The FHA should publish more information broken down by note pools. This includes information on vacancy rates and a breakdown by pool of unpaid loan balances. Additionally, the FHA should provide more data broken down by note purchaser, including unpaid loan balances and sales prices.

Thank you for the opportunity to provide comments. For more information, please contact Caroline Nagy at caroline@ourfinancialsecurity.org.