

VII. *Regulatory Future of Fannie Mae and Freddie Mac*

“[O]nly Congress can address the inherent conflict of attempting to serve both shareholders and a public mission. . . . There is a consensus today that these enterprises pose a systemic risk and they cannot continue in their current form. Government support needs to be either explicit or non-existent, and structured to resolve the conflict between public and private purposes. . . . We will make a grave error if we don’t use this time out to permanently address the structural issues presented by the GSEs.”¹ Henry Paulson, Secretary of the Treasury, September 2008.

A. Introduction

As the U.S. housing bubble continues a painful deflation, Fannie Mae and Freddie Mac, the plagued government sponsored enterprises (“GSEs”) that dominate the U.S. secondary mortgage market, remain in conservatorship and continue to post losses in the billions of dollars.² Congress and the Obama Administration, having broadly reformed the financial industry through the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), are now giving increased attention to the future role these two GSEs will play in the housing finance sector. Although the Administration finally released a proposal early this year and legislators planted a few seeds at the committee level, it is unlikely the country will see any fruit from the 112th Congress, due to the economic risk of

¹ Henry M. Paulson, Jr., U.S. Sec’y of the Treasury, Statement on Treasury and Federal Housing Finance Agency Action to Protect Financial Markets and Taxpayers (September 7, 2008) [hereinafter *Paulson Statement*] (transcript available at <http://www.treasury.gov/press-center/press-releases/Pages/hp1129.aspx>).

² FED. HOUS. FIN. AGENCY, CONSERVATOR’S REPORT ON THE ENTERPRISES’ FINANCIAL PERFORMANCE: SECOND QUARTER 2011, at 9-11 (2011), (hereinafter *Conservator’s Report*) available at <http://www.fhfa.gov/webfiles/22615/ConservatorsReport2Q2011.pdf> (reporting cumulative capital losses for both GSEs from 2008 through Q2 2011 of \$169 billion and total comprehensive income from the single-family credit guarantee segment of negative \$201 billion).

rapidly withdrawing GSE support from the fragile housing market³ and the political consequences of tampering with the chief agent of the American dream of homeownership prior to the pending 2012 elections.⁴ Nonetheless, the Administration's proposal and the congressional bills frame the GSE issue and indicate a range of possible regulatory outcomes.

In February of 2011, the Department of Housing and Urban Development ("HUD") and the U.S. Treasury released a joint report to Congress recommending three possible courses of action to restore liquidity to the housing market, protect taxpayers from future bailouts and promote affordable housing—all three courses called for winding down the GSEs.⁵ Two congressional resolutions from Republicans indicate a degree of bipartisan consensus on the Administration's diagnosis,⁶ but broad support for eliminating the GSEs remains tenuous while many congressional Democrats and a few Republicans remain committed to increasing homeownership through government presence in the secondary mortgage market.⁷

³ U.S. DEP'T OF TREASURY & U.S. DEP'T OF HOUS. & URBAN DEV., REFORMING AMERICA'S HOUSING FINANCE MARKET: A REPORT TO CONGRESS 1 (2011) [hereinafter *HUD Report to Congress*] available at <http://portal.hud.gov/hudportal/documents/huddoc?id=housingfinmarketreform.pdf> (recognizing the fragile state of the housing market and proposing reforms at a measured pace); 74 Fed. Reg. 5609, 5614 (Jan. 30, 2009) ("The Enterprises' combined mortgage assets totaled nearly \$1.6 trillion as of November 30, 2008. If either Enterprise had to shrink its portfolio holdings rapidly, the market values of the mortgage assets held by many other financial institutions would be adversely affected, exacerbating solvency and liquidity problems.").

⁴ Interview with Eric Roiter, Adjunct Professor, Boston University School of Law (Oct. 5, 2011).

⁵ *HUD Report to Congress*, *supra* note 3, at 2.

⁶ See H.R. 1182, 112th Cong. (2011) (endorsing the administration's proposal to wind down the GSEs); S. 693, 112th Cong. (2011) (endorsing the administration's proposal to wind down the GSEs).

⁷ See H.R. 1859, 112th Cong. (2011) (calling for the creation of Housing Finance Guaranty Associations for the purpose of issuing Federal Housing Finance Agency Securities, a catastrophic federal guarantee, and a reserve fund to cover guarantees of Associations placed into conservatorship or receivership); H.R. 2413, 112th Cong. (2011) (calling for the creation of a secondary mortgage market facility for residential mortgages, a federal instrumentality to carry on much of the GSEs' mission of increasing homeownership); Binyamin Appelbaum, *Administration Calls for Cutting Aid to Home Buyers*, N.Y. TIMES, February 11, 2011,

Scholars and industry stakeholders have contributed broad analyses of forces and policies leading to the GSEs' failure as well as proposals for repairing housing finance. This article provides a brief history of the GSEs' path to and experience under conservatorship; summarizes the Administration's proposal and several congressional resolutions; outlines the goals for reform put forth by several scholars and stakeholders; and assesses the likelihood that proposed legislation can achieve those goals.

B. Brief History: The GSEs' Path to and Experience under Conservatorship

Most readers will be familiar with the highlights of the GSEs' history that began with the New Deal birth of Fannie Mae⁸. After Fannie Mae accumulated significant debt during the first several decades of operation, the federal government, seeking to remove that debt from the federal budget, privatized the enterprise and introduced Freddie Mac as a private-sector competitor.⁹ Towards the end of the twentieth century, the GSEs' market share of secondary mortgages grew exponentially¹⁰ as did pressure from Congress and HUD to increase homeownership for low and moderate

<http://www.nytimes.com/2011/02/12/business/12housing.html> (“The Obama administration’s much-anticipated report on redesigning the government’s role in housing finance . . . is not solely a proposal to dissolve the [GSEs]. It is also a more audacious call for the federal government to cut back its . . . campaign to help Americans own homes.”).

⁸ Richard K. Green & Susan M. Wachter, *The American Mortgage in Historical and International Context*, 19 J. ECON. PERSPECTIVES 93, 96 (2005).

⁹ W. Scott Frame & Lawrence J. White, *Fusing and Fuming Over Fannie and Freddie: How Much Smoke, How Much Fire?*, 19 J. ECON. PERSPECTIVES 159, 161 (2005) (“[O]ne major reason for the privatization was that until 1968 Fannie Mae’s debt was part of the federal debt; but when Fannie Mae became a publicly traded company, that debt (which stayed with the company) was removed from the national debt total”).

¹⁰ Press Release, Fed. Hous. Fin. Agency, Statement of FHFA Dir. James B. Lockhart (Sept. 7, 2008) available at <http://fhfa.gov/webfiles/23/FHFAStatement9708final.pdf> (commenting on the GSEs’ combined 80% market share of all new mortgages issued during 2008 as well as \$5.4 trillion of guaranteed MBS and outstanding debt).

income buyers.¹¹ Between 2005 and 2007 the GSEs guaranteed and then sold subprime mortgage backed securities (“MBS”) at a dizzying pace, and the ensuing collapse of the housing market saddled the GSEs with insurmountable obligations on subprime defaults¹². The Treasury, pursuant to the Housing and Economic Recovery Act of 2008¹³ (“HERA”), placed the GSEs into conservatorship as they approached insolvency. The declaration that GSE assets were not backed by the full faith and credit of the U.S. Government proved hollow, just as MBS investors and GSE-critics had long predicted.¹⁴

Although Fannie and Freddie succeeded in increasing homeownership and shareholder value, their hybrid status created opportunities for abuse. During the boom years, former directors profited handsomely despite numerous management scandals,¹⁵

¹¹ Peter J. Wallison, *The Dissent of Peter Wallison*, FIN. CRISIS INQUIRY COMM’N, THE FINANCIAL CRISIS INQUIRY REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES 444-45 (2011) [hereinafter *Wallison Dissent*], available at http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_wallison_dissent.pdf (highlighting the role of HUD in pressuring the GSEs to expand homeownership, leading to the debasing of underwriting standards and catalyzing the subprime bubble); see 24 C.F.R. § 81.12 (2009) (“This annual goal for the purchase by each GSE of mortgages on housing for low- and moderate-income families (“the Low- and Moderate-Income Housing Goal”) is intended to achieve increased purchases by the GSEs of such mortgages.”). See generally PETER J. WALLISON, *SERVING TWO MASTERS YET OUT OF CONTROL* 8-33, 110-18 (The AEI Press 2001) (providing a comprehensive analysis of the GSEs’ federal subsidies, influence on the political process, and policy setting).

¹² *Wallison Dissent*, *supra* note 11, at 444-45.

¹³ Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (2008).

¹⁴ *Conservator’s Report* *supra* note 2. Frame & White, *supra* note 9, at 171 (“[The implied federal guarantee of Fannie and Freddie’s financial obligations] creates a contingent liability for taxpayers in the event that either enterprise becomes insolvent and the government elects to provide financial assistance, as well as causing additional distortions in the housing market.”).

¹⁵ In the decade leading up to the crisis, both Fannie and Freddie saw several CEOs and other executives leave office under significant pressure from Congress for accounting scandals. Nonetheless, these executives received tens of millions of dollars in compensation and severance packages, terms which further roiled congressional critics. Eric Dash, *Few Stand to Gain on*

shareholders reaped billions of dollars through subsidies;¹⁶ and uncreditworthy borrowers gained distortedly cheap credit.¹⁷ After these groups extracted unintended benefits from the system, the market collapse left several million borrowers facing foreclosure¹⁸ and American taxpayers with a bailout of over \$169 billion.¹⁹ The shortcomings of the GSEs now overshadow all past successes and demand a new approach to housing finance.

When Fannie and Freddie failed to sustainably fulfill their dual missions under fragmented regulators—the Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board and certain HUD programs each had a piece of the action—Congress passed HERA, which created a new GSE regulator equipped with

This Bailout, and Many Lose, N.Y. TIMES, Sept. 8, 2008, <http://www.nytimes.com/2008/09/08/business/08scorecard.html>.

¹⁶ *Federal Subsidies for the Housing GSEs, Before the Subcomm. on Capital Markets, Insurance and Government Sponsored Entities of the H. Comm. on Financial Services*, 107th Cong. 3 (2001) (statement of Dan L. Crippen, Director, Cong. Budget Office), available at <http://www.cbo.gov/doc.cfm?index=2839 &type=0>) (detailing the value of subsidies distributed to the GSEs).

¹⁷ FED. HOUS. FIN. AGENCY, FANNIE MAE AND FREDDIE MAC SINGLE-FAMILY GUARANTEE FEES IN 2007 AND 2008 33 (2009) available at <http://www.fhfa.gov/webfiles/14700/GFees72009.pdf> (concluding that prior to 2007 the GSEs, by charging a virtually flat guarantee fee, bestowed the greatest subsidies on the highest-risk mortgages, and that only after the housing market declined did the enterprises begin make changes including the “introduction of a 25 basis point upfront adverse market charge on all single-family mortgages, risk-based pricing based on LTV ratios and borrower credit scores, and additional fees for combinations of loan attributes that increase credit risk.”); see also Symposium, *Regulatory Reform and the Future of the U.S. Financial System: An Examination of the Dodd-Frank Regulation: Panel 3: The Future of Fannie Mae and Freddie Mac* 7 N.Y.U. J. L. & BUS. 531, 540 (2011) (hereinafter *Symposium*) (illustrating how, from the 1970s onward, the fee for a credit-worthy borrower was separated from an uncreditworthy borrower by only 25 to 40 basis points, until Fannie and Freddie’s 2008 introduction of risk-based pricing that widened that fee gap to nearly 200 basis points).

¹⁸ See Bill McBride, *Lawler: How Many Folks Have “Lost Their Homes” to Foreclosure/Short Sales/DILs?*, CALCULATED RISK (Feb. 2, 2011, 5:30 PM), <http://www.calculatedriskblog.com/2011/02/lawler-how-many-folks-have-lost-their.html> (discussing multiple data sets on home foreclosures and various other measures of home loss).

¹⁹ *Conservator’s Report*, *supra* note 2, at 9.

increased independence and authority, known as the Federal Housing Finance Agency (“FHFA”).²⁰ In its first major exercise of authority, the FHFA (in concurrence with Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve, and the boards of both GSEs) placed Fannie and Freddie into conservatorship in September of 2008 after finding their contribution to financial and mortgage market instability had outstripped their capacity to provide liquidity or guarantee MBS.²¹ In order to preserve the viability of the GSEs, the FHFA, pursuant to authority under HERA and in conjunction with the Treasury, entered into Senior Preferred Stock Purchase Agreements with the Treasury. The Treasury committed to provide up to \$100 billion—since revised to \$200 billion²²—to each GSE in exchange for senior preferred shares and commitments from the GSEs to follow portfolio-holding criteria.²³ The criteria allowed each GSE to increase its mortgage assets to \$900 billion through December 31, 2009, after which time each GSE must reduce its mortgage assets by 10% annually until reaching \$250 billion.²⁴ The FHFA estimates this will be accomplished around 2020 and is “[achievable] largely through natural run-off.”²⁵ The FHFA has stated that “reliance on the Treasury Department’s backing will continue until legislation produces a final resolution to the Enterprises’ future.”²⁶

In early 2011, the FHFA outlined three objectives for the GSEs: “(a) Limit their risk and exposure by avoiding new lines of business; (b) ensure profitability of their new books of business without deterring market participation or hindering market recovery;

²⁰ *Paulson Statement*, *supra* note 1.

²¹ Portfolio Holdings, 75 Fed. Reg. 81,405, 81,406 (Dec. 28, 2010) (to be codified at 12 C.F.R. pt. 1252) (“Significant safety and soundness issues and risk that the Enterprises would be unable to fulfill their missions caused FHFA, with the concurrence of the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve . . . to place the Enterprises into conservatorship.”).

²² *Id.* at n1.

²³ *Id.* at 81,406.

²⁴ *Id.* at 81,407 (explaining that to achieve the 10% reduction required under each PSPA, “each Enterprise is required to reduce its mortgage assets to at most 90 percent of the maximum allowable amount each was permitted to own as of December 31 of the immediately preceding calendar year . . .”).

²⁵ 74 Fed. Reg. 5609, 5611 (Jan. 30, 2009).

²⁶ Minimum Capital, 76 Fed. Reg. 11,668, 11,669 (March 3, 2011).

and (c) minimize losses on mortgages already on their books.”²⁷ To achieve these objectives, the FHFA has broad discretion in its capacity as either conservator or receiver to do any of the following: impose minimum capital requirements;²⁸ transfer or sell GSE assets and liabilities;²⁹ place a GSE into liquidation;³⁰ repudiate any contract to which a GSE is a party pursuant to section 1367(d) of the Safety and Soundness Act;³¹ or enforce any contract entered into by a GSE pursuant to section 1367(d)(13) of the Safety and Soundness Act.³²

C. Regulatory Future: Treasury/HUD Proposal and Congressional Resolutions

The Treasury/HUD proposal calls for a gradual wind-down of the GSEs designed to eliminate subsidies and reduce moral hazard while allowing private capital and private securitizers to return in earnest to the secondary mortgage market.³³ In addition to supporting the existing GSE portfolio reduction plan and recommending a minimum 10% down payment on all new mortgages, the Treasury/HUD proposal calls for a mandatory increase in fees charged by GSEs for guaranteeing MBS; a reduction in conforming loan limits to permanently decrease the GSEs’ mortgage market share; and a requirement that the GSEs acquire additional credit-loss protection from private insurers.³⁴ With the GSEs constrained in these ways, the proposal anticipates that private capital—with room to undercut the high GSE fees—will return after a conspicuous absence since 2008.³⁵ As for the GSEs’ regulatory future, FHFA

²⁷ *Id.*

²⁸ *See id.*

²⁹ 12 C.F.R. § 1237.3(d) (2011).

³⁰ *Id.* at § 1237.3(b).

³¹ *Id.* at § 1237.5(a).

³² *Id.* at § 1237.6.

³³ *HUD Report to Congress, supra* note 3, at 1-2, 12 (“The Administration will work with the FHFA to determine the best way to responsibly reduce Fannie Mae and Freddie Mac’s current role in the mortgage market and ultimately wind down both institution, creating the conditions for private capital to play the predominant role in housing finance.”).

³⁴ *Id.* at 12-13.

³⁵ *Symposium, supra* note 17, at 538 (pointing out that since 2009 Fannie and Freddie have created or guaranteed 90% of all mortgages and that there has

would implement the Treasury/HUD proposal, and its role in the housing finance market would presumably diminish in step with the GSE wind-down. Finally, the Treasury/HUD proposal notes that the Financial Stability Oversight Council—created by Dodd-Frank and authorized to supervise and liquidate systemically important financial institutions including the GSEs—provides an additional layer of regulatory protection for taxpayers in the event of a future GSE crisis.³⁶

A 2011 bill introduced by Republicans in both the House (as House Bill 1182) and Senate (as Senate Bill 693) adopts most pieces of the Treasury/HUD proposal and calls for an orderly wind-down of the GSEs through restrictive mechanisms.³⁷ Titled the ‘GSE Bailout Elimination and Taxpayer Protection Act’, the bill calls for a repeal of the GSEs’ mandatory housing goals,³⁸ a reduction in conforming loan limits,³⁹ an increase in minimum capital requirements,⁴⁰ an increase in guarantee fees⁴¹ and eventual wind-down of the GSEs.⁴² The guarantee fee provision requires the FHFA Director to establish an appropriate pricing mechanism “taking into consideration current market conditions and any data collected pursuant to section 1601 of [HERA].”⁴³ The bill requires the GSEs to begin charging guarantee fees for MBS three years after enactment of the resolution, but gives the FHFA Director discretion to phase in the fees before that date.⁴⁴

House Bill 1859, introduced by a Republican and a Democrat, calls for the creation of (1) Housing Finance Guaranty Associations that would wield many of GSEs’ functions and issue

been only one non-agency securitization, performed by Redwood Trust and consisting only of non-conforming, jumbo mortgages).

³⁶ *HUD Report to Congress*, *supra* note 3, at 17 (“The newly created Financial Stability Oversight Council (“FSOC”) has the authority to require consolidated supervision of any financial firm . . . whose failure could pose a threat to financial stability.”); *see* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, 1442-56 (2010) (to be codified at 12 U.S.C. § 5518) (establishing the powers of the FSOC).

³⁷ H.R. 1182, 112th Cong. (2011); S. 693, 112th Cong. (2011).

³⁸ H. R. 1182, § 4(a)(1), 112th Cong. (2011).

³⁹ *Id.* at § 4(a)(2).

⁴⁰ *Id.* at § 4(b)(1).

⁴¹ *Id.* at § 4(a)(4).

⁴² *Id.* at § 5.

⁴³ *Id.* at § 4(a)(4).

⁴⁴ *Id.* at § 4(a)(4).

Federal Housing Finance Agency Securities⁴⁵ and (2) a new Office of Securitization within the FHFA to create and label the securities, administer and service the securities, and impose and collect a fee for a catastrophic federal guarantee.⁴⁶ Initially, the FHFA Director would set a pricing structure for the guarantee fee charged to the Associations, but once the Director deemed that the Associations were sufficiently and stably serving the market and engaged in healthy competition, the Director would terminate the pricing structure and allow each Association to determine its own guarantee fees.⁴⁷ Finally, catastrophic federal guarantee provision would draw funding not only from annual fees paid by Associations but also from the FHFA Director's authority to make a special assessment on Associations if the guarantee fund proved insufficient.⁴⁸

A final bill, also introduced by a Republican and a Democrat, calls for maintaining a robust government presence in the secondary mortgage market. House Bill 2413 nationalizes the GSEs' role of securitizing and guaranteeing residential mortgages through the creation of a federal "Secondary Market Facility".⁴⁹ To oversee the Facility, the bill creates a new five-member FHFA Board staffed by three Presidential appointees, one HUD Secretary designee, and one Treasury designee.⁵⁰ The Facility's market share could not exceed 50% of U.S. mortgage originations.⁵¹ The Facility's initial portfolio could not exceed \$250 billion in mortgage assets, but the FHFA Board would have discretionary authority to increase the portfolio limit annually.⁵²

D. Highlights from Scholars and Professionals: Diagnosis and Prescriptions

While lawmakers have been loath to overhaul the housing finance industry, scholars and stakeholders have produced broad analysis of forces and policies leading to the GSEs' failure as well as

⁴⁵ H.R. 1859, 112th Cong. § 3(2011) (amending the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. § 4501).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ H.R. 2413, 112th Cong. § 101(a)-(c) (2011).

⁵⁰ *Id.* at § 301(a)(4).

⁵¹ *Id.* at § 103(a).

⁵² *Id.* at § 108(a)(1).

proposals for reform. One narrative of the crisis, voiced by the majority opinion of the Financial Crisis Inquiry Commission, points to a confluence of inadequate regulation, predatory lending, institutional greed, misaligned incentives and excessive risk-taking.⁵³ In keeping with a general distrust of both private securitizers and the GSEs, proponents of this narrative frequently call for reforms that leave in place a two pronged system whereby both government guarantees and private financing institutions play significant roles in housing finance.⁵⁴

In a dissenting statement to the Financial Crisis Inquiry Commission, Peter Wallison pins the brunt of the blame for the GSEs' failure on certain congressional policies promulgated by HUD and aimed at increasing homeownership at whatever cost.⁵⁵ Fannie and Freddie's compliance with these policies caused them to reduce underwriting standards and increase their purchases of non-traditional mortgages, creating heavy exposure to risky, uncreditworthy assets.⁵⁶ Proponents of this narrative frequently call for removing the GSEs and allowing private institutions to fill the market, thus removing the taxpayer-funded subsidies and transferring the risk-pricing function back into the private sector.⁵⁷

⁵³ FIN. CRISIS INQUIRY COMM'N, THE FINANCIAL CRISIS INQUIRY REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES xviii-xxiii (2011).

⁵⁴ See Andrea J. Boyack, *Laudable Goals and Unintended Consequences: The Role and Control of Fannie Mae and Freddie Mac*, 60 AM. U. L. REV. 1489 (2011); Symposium, *supra* note 35, at 540; Adam J. Levitin & Susan M. Wachter, *Should Fannie and Freddie Go? More Openness on Mortgages*, N.Y. TIMES, March 7, 2011, <http://www.nytimes.com/roomfordebate/2011/03/07/should-fannie-and-freddie-be-dissolved/privatization-of-housing-finance-system-creates-risk>; Alan M. White, *Should Fannie and Freddie Go? Reboot an Absurd System*, N.Y. TIMES, March 7, 2011, <http://www.nytimes.com/roomfordebate/2011/03/07/should-fannie-and-freddie-be-dissolved/reboot-an-absurd-system>.

⁵⁵ *Wallison Dissent*, *supra* note 11, at 514. See also, Peter J. Wallison, *Wall Street's Gullible Occupiers*, WALL ST. J., October 13, 2011, <http://online.wsj.com/article/SB10001424052970203633104576623083437396142.html> (summarizing his dissent).

⁵⁶ *Wallison Dissent*, *supra* note 11 at 515.

⁵⁷ See W. Scott Frame, Financial Economist and Policy Adviser, Fed. Reserve Bank of Atlanta, Address at the Bankers Club of Chicago: Redefining the Scope of Government Intervention in the Secondary Mortgage Markets (May 27, 2010) (transcript available at http://www.frbatlanta.org/news/speeches/frame_052710.cfm) (recommending that regardless of

E. Conclusion: Linking Legislation with the Prescriptions

While the legislative community timidly moves toward reforming housing finance, the country is at risk of losing a unique opportunity to institute a much needed sea-change in the policies that drive American housing. Given the escalating GSE losses and the general consensus among policymakers and stakeholders that the government must scale back the GSEs' presence in housing finance, legislators should push forward with an urgency tempered only by the economy's ability to handle reform. Beyond removing the GSEs, Congress should also reconsider and reduce all significant federal intervention in the housing market other than efforts to assist the most vulnerable groups. Professor Edward Glaeser points to the home mortgage interest tax deduction as a poignant example of the distortion of individual choice;⁵⁸ the Congressional Budget Office estimated the 2009 mortgage interest deduction to be \$80 billion.⁵⁹ Glaeser argues that decades of subsidies, low interest rates and tax incentives have skewed housing choices toward suburban homeownership and away from urban, rental-dominated cities, creating economic inefficiencies and artificial investment in home equity.⁶⁰

While the major shifts that Glaeser calls for are unlikely to come to fruition in the near future, the 113th Congress should have sufficient political momentum and an adequately stabilized economy to initiate reforms to housing finance. Removing the GSEs would constitute the first major step towards restoring a private housing finance market that properly prices risk, allows taxpayers to make

how the housing finance system is restructured, risk must be explicitly priced); Symposium, *supra* note 35, at 547-548 (concluding that Fannie and Freddie should be abandoned as failed institutions and suggesting that other federal instrumentalities such as the FHA and Ginnie Mae are sufficient to pursue affordable housing goals).

⁵⁸ Edward Glaeser, *Should Fannie and Freddie Go? Reform Isn't Enough*, N.Y. TIMES, June 27, 2011, <http://www.nytimes.com/roomfordebate/2011/03/07/should-fannie-and-freddie-be-dissolved/reforming-fannie-and-freddie-isnt-enough> [hereinafter *Glaeser*].

⁵⁹ CONG. BUDGET OFFICE, *An Overview of Federal Support for Housing*, November 3, 2009, http://www.cbo.gov/ftpdocs/105xx/doc10525/HousingPrograms.1.1.shtml#wwfootnote_inline_71.

⁶⁰ *Glaeser, supra* note 58.

undistorted housing decisions and limits the possibility of government bailouts due to moral hazard associated with implicit guarantees.

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