

PUBLIC SUBMISSION

Received: May 16, 2022 Tracking No. 138-ihl0-n3mo Comments Due: May 16, 2022 Submission Type: API
--

Docket: EBSA-2022-0002

Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk

Comment On: EBSA-2022-0002-0001

Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate Related Financial Risk

Document: EBSA-2022-0002-DRAFT-0095

1210-ZA30 comment 00054 Creative Investment Research 05162022

Submitter Information

Organization: Creative Investment Research

General Comment

May 16, 2022

MEMORANDUM

To: US Department of Labor's Employee Benefits Security Administration (EBSA)

Re: Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk

We note with interest that “On Feb. 14, the DOL published in the Federal Register Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk. The request for information (RFI) asks for public comments on what actions, if any, the department should take under federal law to protect retirement savings and pensions from risks associated with changes in climate.

The RFI poses specific questions related to data collection and fiduciary issues under

the Employee Retirement Income Security Act (ERISA).”

The DOL's Employee Benefits Security Administration (EBSA) asked a number of questions. We are familiar with many economists of color, excluding our firm, who might be able to add value and authenticity to these discussions, but, given the fact that incompetence, anti-Black discrimination and exclusionary practices based on race are currently operational in investment and finance, including at regulatory bodies, we decline to more directly address the issues raised here, having done so over the past 30 years. Our understanding is borne of significant experience, knowledge which has given the firm in depth comprehension of these issues. We have expertise that is unmatched in either duration or depth. We further note the fact that African American innovators in this area are rarely given either acknowledgement, credit or access. These facts mean that additional specific input would be futile. We provide data to support this statement by reference to the following:

- Race, Class and the Environmental Movement <https://www.prlog.org/10490189-race-class-and-the-environmental-movement.html>
- "How Environmental Issues Impact Stock Returns"
[@Eventbrite](https://www.eventbrite.com/e/how-environmental-issues-impact-stock-returns-tickets-2029288657)
- The Department of Labor's Fiduciary Rule <https://youtu.be/kOGS-DdLYe0> via @YouTube
- The Future of Money <https://youtu.be/n1i4J8df0t0> via @YouTube

Please see the attached.

Attachments

DOL Env Economics and Policy

May 16, 2022

MEMORANDUM

To: US Department of Labor's Employee Benefits Security Administration (EBSA)

Re: Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk

We note with interest that “On Feb. 14, the DOL published in the Federal Register Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk. The request for information (RFI) asks for public comments on what actions, if any, the department should take under federal law to protect retirement savings and pensions from risks associated with changes in climate.

The RFI poses specific questions related to data collection and fiduciary issues under the Employee Retirement Income Security Act (ERISA).”

The DOL's Employee Benefits Security Administration (EBSA) asked a number of questions. We are familiar with many economists¹ of color, excluding our firm, who might be able to add value and authenticity to these discussions, but, given the fact that incompetence, anti-Black discrimination and exclusionary practices based on race are currently operational in investment and finance, including at regulatory bodies, we decline to more directly address the issued raised here, having done so over the past 30 years.

Our understanding is borne of significant experience, knowledge which has given the firm in depth comprehension of these issues. We have expertise that is unmatched in either duration or depth. We further note the fact that African American innovators in this area are rarely given either acknowledgement, credit or access. These facts mean that additional specific input would be futile. We provide data to support this statement by reference to the following:

- Race, Class and the Environmental Movement <https://www.prlog.org/10490189-race-class-and-the-environmental-movement.html>
- "How Environmental Issues Impact Stock Returns" <https://www.eventbrite.com/e/how-environmental-issues-impact-stock-returns-tickets-2029288657> @Eventbrite
- The Department of Labor's Fiduciary Rule <https://youtu.be/kOGS-DdLYe0> via @YouTube
- The Future of Money <https://youtu.be/n1i4J8df0t0> via @YouTube
- We called for the Fed, SEC, FDIC, OCC, and CFPB initiate rulemaking to create "transparency and accountability for corporate Black Lives Matter (BLM) pledges." We submitted this petition for rulemaking pursuant to section 553(e) of the Administrative Procedure Act. See: <https://www.prlog.org/12911485-creative-investment-research-requests-federal-agencies-hold->

¹ Race, Class and the Environmental Movement <https://www.prlog.org/10490189-race-class-and-the-environmental-movement.html> and <https://drive.google.com/file/d/1LUCWzdGTyh92SqiUXjsiZ-ugM-4eFGab/view?usp=sharing>

[corporations-accountable-for-blm-pledges.html](https://www.congress.gov/bills/117/house/2123) Legislative activity² on diversity issues related to African Americans highlights how these efforts suggest that it is time to bring coherence to BLM Pledge activity, disclosure and reporting. Our SEC petition can be found at: <https://www.sec.gov/rules/petitions/2021/petn4-774.pdf>

- On July 3, 1993, Mr. Cunningham wrote to Mary Schapiro, the former Chair of the SEC, when she was a commissioner to notify the Commission about a certain, specific investing "scam." A timely warning was not issued to the investing public. That letter to the SEC described correspondence to Mr. Cunningham dated July 2, 1993 from an "officer" of the Nigerian Ministry of Finance. The SEC acknowledged receiving this warning, in a letter to Mr. Cunningham dated October 29, 1993. Several American citizens were, in the interim, "taken" by these scam artists. At least one U.S. citizen was killed when they went to the country in an attempt to retrieve their funds. In response to these and other complaints, the SEC launched retaliatory regulatory actions against Mr. Cunningham, culminating in the removal of his investment advisor registration. See: <https://www.creativeinvest.com/SECNigerianLetter.pdf>
- Mr. Cunningham designed the first mortgage security backed by home mortgage loans to low- and moderate-income persons and originated by minority-owned institutions. (See: Security Backed Exclusively by Minority Loans, The American Banker. Friday, December 2, 1994. Online at <https://www.creativeinvest.com/mbsarticle.html>)
- On November 16, 1995, Mr. Cunningham launched the first website devoted to minority economic education and empowerment. <https://www.creativeinvest.com/images/be1996.jpg>
- In 2001, we helped design a refinancing plan for victims of predatory lending that led to the creation of targeted community development investments. (See: <https://www.creativeinvest.com/antipredatory.html>) **We requested the Obama Administration use this development to protect millions of minority homeowners (see Appendix 1).**
- On December 22, 2003, statistical models created by Mr. Cunningham using the Fully Adjusted Return[®] Methodology signaled the probability of system-wide economic and market failure. (See page 6: <http://www.sec.gov/rules/proposed/s71903/wmccir122203.pdf>)
- On April 7, 2006, Mr. Cunningham submitted a proposal to US Department of Housing and Urban Development (HUD) to create a collaborative, market-based approach to increase participation in HUD 's Energy Efficient Mortgage (EEM) Program as an alternative to the predatory lending practices that Mr. Cunningham projected would damage the marketplace.

² H.R.2123 - Diversity and Inclusion Data Accountability and Transparency Act. Online at: <https://www.congress.gov/bill/117th-congress/house-bill/2123?s=1&r=61>

H.R. 2543, the "Federal Reserve Racial and Economic Equity Act" online at https://financialservices.house.gov/uploadedfiles/04.20.2021_bills-1172543ih.pdf and

H.R. 1277, the "Improving Corporate Governance Through Diversity Act" online at https://financialservices.house.gov/uploadedfiles/04.20.2021_bills-117hr1277ih.pdf

The proposal, submitted to the Senior Energy Management Officer in the Office of Environment and Energy, identified a utility company willing to manage "the process of having energy ratings and evaluations done on properties," at no cost to the borrower. He identified a pension fund to purchase the resulting GNMA EEM pool. Rather than support the types of greed induced, faulty lending practices that are the subject of this case and that negatively impacted the mortgage market and the country, he proposed to develop green, socially responsible methods to enhance homeownership opportunities specifically benefiting minorities and women. This proposal was rejected by an incompetent, racially biased Agency in favor of the types of lending practices that severely damaged global and US markets. **(See Appendix 2.)**

- My December 26, 2016 forecast stated that: "Under any conceivable scenario, the current situation is very bad, and I mean toxic, for democratic institutions in general and for people of color specifically. Bottom line: our Fully Adjusted Return Forecast** indicates that, over time, things will get much, much worse....." From: Trumpism:
<https://www.linkedin.com/pulse/trumpism-william-michael-cunningham-am-mba/>

Also see:

- Thriving As a Minority-Owned Business Building a Pathway to Success for Minority Entrepreneurs <https://www.prlog.org/12901067-thriving-as-minority-owned-business-building-pathway-to-success-for-minority-entrepreneurs.html>
- Maternal Mortality Reparation Facility for Black Women <https://www.prlog.org/12876083-maternal-mortality-reparation-facility-for-black-women.html>
- Survey: Most Appropriate Applications for Blockchain Technology <https://www.prlog.org/12735273-survey-most-appropriate-applications-for-blockchain-technology.html>
- Child Tax Credit: <https://childtaxcredit.net/>
- The Fairness Economy: <https://thefairnesseconomy.com/>
- Blackwomenomics: <https://blackwomenomics.com/>
- Statement for the Record on Crypto Inclusion Myths <https://www.prlog.org/12899511-creative-investment-research-issues-statement-for-the-record-on-crypto-inclusion-myths.html>
- Blockchain, Cryptocurrency and the Future of Monetary Policy <https://www.prlog.org/12785779-blockchain-cryptocurrency-and-the-future-of-monetary-policy.html>

- Is FedCoin, a US Government-issued cryptocurrency, feasible?
<https://www.prlog.org/12772509-is-fedcoin-us-government-issued-cryptocurrency-feasible.html>

We incorporate these documents by reference. Our concern remains the public interest.

Appendix 1

Communication with NEC and 2011 Draft EO to save minority homeowners.

----- Forwarded message -----

From: Ting, Wayne Wayne_H_Ting@who.eop.gov Carson, Jon jon.carson@who.eop.gov

Date: Thu, Aug 29, 2013 at 3:03 PM

Subject: Fannie and Freddie

To: williamcunningham840@gmail.com williamcunningham840@gmail.com

William,

I am a housing policy advisor at the National Economic Council. Our chief of staff forwarded me your email to Gene. Want to confirm we received your suggestions concerning the GSEs. And if it would be helpful, happy to chat over phone to learn more.

Thanks so much for your thoughts.

Best,

Wayne

EXECUTIVE ORDER (DRAFT)

By the authority vested in me as President of the United States of America, and in order to support the housing and construction industries, domestic wealth and job creation, and to help millions of American citizens adversely affected; it is hereby ordered as follows:

Section 1. Policy. In a modern society, shelter is a necessity. The housing and housing financing markets are a major engine of economic growth and job creation. The United States faces increasing doubts about its ability to maintain and grow its housing and housing finance markets. Much of this doubt results from a major economic crisis, a crisis created, in part, due to predatory, or unfair lending practices. Many of these predatory home mortgage lending practices contain elements of common law fraud. "Common law fraud has nine elements:

1. a representation of an existing fact;
2. its materiality;
3. its falsity;
4. the (lender)'s knowledge of its falsity;
5. the (lender)'s intent that it shall be acted upon by the (borrower);
6. (borrower)'s ignorance of its falsity;
7. (borrower)'s reliance on the truth of the representation;
8. (borrower)'s right to rely upon it; and
9. consequent damages suffered by (borrower)."

Predatory lending practices aimed at racially segregated minority neighborhoods led to mass foreclosures that fueled the U.S. housing crisis, according to a study published in the American Sociological Review.³ "Between 2004-2006 the share of subprime mortgages relative to total home mortgage loan originations ranged from 18%-21%, versus less than 10% in 2001-2003 and during 2007. The value of USA subprime mortgages was estimated at \$1.3 trillion as of March 2007, [17] with over 7.5 million first-lien subprime mortgages outstanding."

While minority communities bore the initial brunt of these unfair and illegal practices, the US economy has been severely and negatively impacted. Nationwide, unemployment has increased and housing prices have fallen. We have also seen an increase in the number of US citizens suffering recession-related health problems.

The Administration has implemented several programs to enable home owners and borrowers to avoid losing their home due to foreclosure by enabling banks and other mortgage holders to modify home mortgage loans to generate loan payment levels that are affordable for borrowers and sustainable for the long-term. In March 2009, the Administration published detailed program guidelines for the Making Home Affordable (MHA), the Home Affordable Unemployment, Second Lien Modification, Home Affordable Foreclosure Alternatives, and the Home Affordable Modification Programs. Mortgage servicers were authorized to begin modifications under these plans immediately. With the assistance of

³ Racial Segregation and the American Foreclosure Crisis, Jacob S. Rugh and Douglas S. Massey, American Sociological Review, Volume 75 Number 5 October 2010

Creative Investment Research, Inc. Response to request for draft E.O. 6/17/11. J. Carson.

several government agencies, GSEs, and servicers - this effort involved the development and refinement of servicer guidelines, modification documents, and data collection and modeling tools. Efforts to help keep borrowers in their homes have been ineffective. Despite our best efforts, millions of U.S. citizens have lost their homes. Tens of thousands are now homeless.

Therefore,

Section 2. To protect American citizens and to restore the rule of law in the mortgage market, it is hereby ordered as follows:

- a. Homeowners who are in danger of losing their homes due to predatory lending practices will have their home mortgage loan extinguished. That is, the loan will cease to exist as a legally binding contract.
- b. A new, non-predatory home mortgage loan will be created within 90 days to replace the extinguished loan.

Section 3. Ginnie Mae, Fannie Mae and Freddie Mac will be responsible for the identification of predatory lending practices and borrowers affected. The GSE's will be responsible for all mortgage review and analysis.

- a. Loans identified as predatory will be extinguished.
- b. New, affordable, non-predatory mortgage loans will be created to replace the predatory loans.
- c. Extra consideration will be given if the borrower decides to make their home energy efficient. In this case, the new loan will be an energy efficient home mortgage loan. Ginnie Mae, Fannie Mae and Freddie Mac will be responsible for creating practices and processes to facilitate this energy efficient mortgage lending effort.

Section 4. Nothing in this order shall be construed to impair or otherwise affect:

- a. Authority granted by law to an executive department, agency or the head thereof, or the status of that department or agency within the Federal Government; or
- b. Functions of the Director of the Office of Management and Budget relating to budgetary, administrative or legislative proposals.

This order shall be implemented consistent with applicable law.

This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its Departments, Agencies, entities, its officers, employees, or agents, or any other person.

/Barack Obama/

APPENDIX 2

Communication with HUD and 2006 Draft proposal to save minority homeowners.

Friday, April 7, 2006

CONFIDENTIAL MEMORANDUM

To: Steven Ledbetter, Director, Securities Policy and Research, Ginnie Mae, U.S. Department of Housing and Urban Development

cc: Mr. Richard Bradley, Federal Housing Administration (FHA),

Mr. Michael Freedberg, Office of the Assistant Secretary for Policy Development & Research, U.S. Department of Housing and Urban Development,

Mr. Robert Groberg, U.S. Department of Housing and Urban Development

From: William Michael Cunningham, Social Investment Advisor, Creative Investment Research, Inc.

Re: Proposal to create a GNMA II Pool backed by FHA Energy Efficient Mortgages

Thanks, Steven, for your time. As promised, this memorandum contains information on our proposal to create a GNMA II MBS pool backed by Energy Efficient Mortgages.

Background

Creative Investment Research, Incorporated, a Delaware corporation, was founded in 1989 to expand the capacity of capital markets to provide capital, credit and financial services in minority and underserved areas and markets. We have done so by creating new financial instruments and by applying existing financial market technology to underserved areas. The firm is owned and managed by William Michael Cunningham. Mr. Cunningham registered with the U.S. Securities and Exchange Commission as an investment adviser on February 2, 1990. He helped design a refinancing plan for victims of property flipping in Minneapolis that led to the creation of targeted community development investments. (See: <http://www.socialfunds.com/news/article.cgi/article682.html>)

The firm pioneered the systematic use of financial and social data in the selection and evaluation of financial institutions when we created the first social and financial impact methodology, the Fully Adjusted Return[®] index, in 1991.

The firm also developed the first Community Reinvestment Act (CRA) securitization. (MBS pool backed by loans from minority financial institutions. Investment first proposed in 1992.)

Proposal to create a GNMA II Pool backed by FHA Energy Efficient Mortgages

On October 19, 2005, we were certified as a Participant in the U.S. Small Business Administration's (SBA) 8(a) Business Development Program. The Community Development Financial Institution Fund of the US Department of the Treasury certified the firm as a Community Development Entity on August 29, 2003. We are a registered Organizational Stakeholder of the Global Reporting Initiative (GRI). The firm has been certified by the Co-op America's Business Network (CABN) and has been awarded the Co-op America Business Seal of Approval.

General Proposal

On March 27, 2006, we proposed, to a client, the creation of a GNMA II MBS pool backed by loans from the FHA Energy Efficient Mortgage (EEM) program. Our client is a large utility company and may be interested in participating in the project both as an investor and as an energy expert. Our proposal is unique and unlike any investments in the GNMA marketplace today. Our proposal results directly from the firm's long experience as innovators in the MBS market.

We have approached GNMA and HUD for assistance with this project. Our proposal directly supports HUD's Energy Action Plan, "a wide ranging 21-point program approved by HUD Secretary Alphonso Jackson to save energy in public housing and other HUD assisted properties. The Energy Action Plan is aimed at upgrading the energy efficiency of existing housing by using an established inventory of proven products and appliances that can immediately be put to work through consumer education and outreach, market-based incentives, and public private partnerships." Our proposal will significantly increase market-based incentives. We further believe our proposal will help make FHA "an important financing option in today's housing market."

Finally, we believe assistance is appropriate given the Department's active solicitation of innovative, value adding ideas and its stated desire to work with small business and minority firms.

Summary of the EEM program

As we understand the EEM program, in 1992, Congress mandated energy efficient mortgages (EEMs) in five States. In 1995, the pilot program was expanded to a national program. Since 1995, EEM loan volume has increased: FHA insured 27,150 EEMs in FY2001, 30,331 in FY2002 and 26,600 in FY2003.

Eligible properties are one to four unit existing and new construction. Mortgages are FHA backed loans, using standard underwriting procedures. A 3 percent cash down payment required. Energy efficient improvements up to the greater of 5 percent of the property's value (not to exceed \$8,000), or \$4,000 are covered.

FHA EEMs provide mortgage insurance to purchase or refinance a principal residence and incorporate the cost of energy efficient improvements into the mortgage. The mortgage loan is funded by a lending institution, such as a minority bank. The mortgage is insured by HUD. We understand that FHA insures loans. FHA does not provide loans.

Proposal to create a GNMA II Pool backed by FHA Energy Efficient Mortgages

Program Benefits

The EEM program recognizes that reduced home operating expenses permit a homeowner to pay a higher mortgage to cover home operating and maintenance costs, including the cost of the energy improvements. We believe the EEM program results in lower mortgage loan prepayments, lower mortgage loan defaults, and will result in a higher GNMA II EEM pool value in the market. This higher GNMA II EEM pool value, once confirmed and noted, will encourage financial institutions to originate additional EEM mortgage product.

Specific Proposal

We will work with lenders in a specific geographic area to increase the volume of EEM mortgage loans. We may also work directly with EEM program borrowers. We will then seek to have the EEM loans formed into GNMA II pools, which we may direct our clients to purchase. We may be able to identify investors with up to \$25 million to invest in EEM-backed GNMA II pools.

In addition, we will work with any financial institution, but will target financial institutions serving underserved communities and financial institutions owned by women and minorities. Our utility company client may be willing to serve as the Energy Expert for this project. In this role, they may certify that energy efficient improvements are cost effective, meaning that the total cost of the improvements is less than the total present value of the energy saved over the useful life of the energy improvement.

Action Steps

1. Review the financial performance of EEM loans. According to several persons, FHA case number data exists that uniquely identifies EEM loans. This would allow for an EEM loan performance review.
2. Motivate lenders. We may be able to leverage the relationship our client has with both large and community based financial institutions to develop incentives that will motivate lenders.
3. We require additional funding from HUD to move this project forward. I would like to arrange a small meeting to fully outline next steps, to determine interest levels and to highlight and deal with any real or perceived roadblocks.

Again, thank you for your help, Steve. Feel free to call me at 612-822-9605 with questions or comments.

Sincerely,

William Michael Cunningham, CEO
Creative Investment Research, Inc.

Proposal to create a GNMA II Pool backed by FHA Energy Efficient Mortgages

SECURITY AND COPYRIGHT NOTICE: This document (including all pages) is for the sole use of the intended recipient, the U.S. Department of Housing and Urban Development, and contains confidential information. Unauthorized use, distribution, disclosure or any action taken or omitted to be taken in reliance on this document is prohibited, and may be unlawful. By inadvertent disclosure of this document Creative Investment Research, Inc. and William Michael Cunningham do not waive ownership or confidentiality privilege with respect hereto. This writing/publication is a creative work fully protected by all applicable copyright laws, as well as by misappropriation, trade secret, unfair competition and other applicable laws. The authors of this work have added value to the underlying factual materials herein through one or more of the following: unique and original selection, coordination, expression, arrangement, and classification of the information. No copyright is claimed in the text of statutes, regulations, and any excerpts from others' reports or articles quoted within this work. Copyright©2022, 2006 by William Michael Cunningham and Creative Investment Research, Inc. All rights reserved including the right to reproduce in whole or in part in any form. Any reproduction in any form by anyone of the material contained herein by anyone other than authorized representatives of the U.S. Department of Housing and Urban Development, without the permission of William Michael Cunningham and Creative Investment Research, Inc. is strictly prohibited. This document is registered with the US Library of Congress.