His Excellency, President Muhammadu Buhari, GCFR, recently declined assent to the National Housing Fund (NHF) (Establishment) Bill, 2018 (“the Bill”) which was passed by the National Assembly in November 2018. The Bill repeals the National Housing Fund Act, Cap. N45, Laws of the Federation of Nigeria, 2004 (“NHF Act 2004”). The objective of the Bill is to provide additional sources of funding for effective financing of housing projects in Nigeria.

2. Amount of contributions to the Fund
The Bill requires:
- employees in the public and private sectors, and self-employed individuals, who earn the minimum wage and above, to contribute 2.5% of their monthly income to the Fund at an interest rate return of 2% per annum (4% under the NHF Act 2004), or a rate as may be determined by the Bank. The employer is required to deduct and remit the contributions to the Fund not later than one month from the date of deduction.
- local manufacturers and importers of cement to contribute 2.5% ex-factory price before transportation cost for each bag of 50 kilogram or its equivalent as “Sustainable Development Levy” (SDL) to the Fund.

The Bill further provides for the Federal Government to make discretionary grant of money to the Fund for long term loans and advances for housing development in Nigeria.

3. Mandatory investment by certain financial services providers
The Bill revises the mandatory amount of investment required to be made into the Fund by commercial and merchant banks, and insurance companies. Specifically the Bill requires;
- commercial and merchant banks to invest a minimum of 10% of their profit before tax (PBT) at an interest rate of 1% above interest payable on current accounts by banks. The mandatory investment was previously 10% of loans and advances at the same interest rate;
- insurance companies to invest a minimum of 10% of their PBT at an interest rate of 1% above interest payable on current accounts by banks (4% interest rate under the NHF Act 2004). The mandatory investment...
threshold was previously 20% of non-life funds and 40% of life funds in real property development of which a minimum of 50% is payable into the Fund.

PFAs, as new additions to the list, are to invest a minimum of 10% of their PBT into the Fund at an interest rate not exceeding 1% above the interest rate payable on current account by banks.

The Bill affirms its supremacy in the event of any conflict with the provisions of the Insurance Act and the Pension Reform Act relating to investment in real estate development.

4. **Duties of Regulators**

   In addition to the requirements in the NHF Act 2004, for the Central Bank of Nigeria (CBN) and National Insurance Commission (NAICOM) to collect the statutory NHF contributions from banks and insurance companies not later than one month after the end of every year, the Bill now imposes a similar obligation on the National Pension Commission (PENCOM) in respect of the PFAs. The Bill further empowers the CBN, NAICOM and PENCOM to cancel the operating licences of respective companies in the event of failure to invest the compulsory amounts in the Fund.

   The Bill vests the Federal Inland Revenue Service (FIRS) with the power to assess and collect the SDL from manufacturers and importers of cement. The SDL shall be due and payable within 60 days from the date in which the FIRS serves a notice of assessment on them.

5. **Penalties for non-compliance**

   The Bill imposes, among others, stiff penalties of ₦100 million and ₦10 million on companies and individuals, respectively, who fail to comply with its provisions.

   The Bill provides that any amount due under the NHF Act will be payable regardless that the liability is in dispute.

6. **Refund of contribution**

   A contributor who does not have any outstanding loan with the FMB would be eligible for a refund of his contributions, upon the attainment of 60 years of age, 35 years of service or any other retirement age specified in any extant Nigerian law.

   The refund is payable within 3 months of application at an interest rate of 2% per annum. In the event of the death of an eligible contributor, the refunds are payable to his legal personal representatives on presentation of appropriate instruments issued by the Probate Registry to the FMB.

Rather than address these challenges, the Bill is replete with many flaws which made it unacceptable to stakeholders who would be impacted by its operation. It is in light of this that the President’s decision to decline his assent to the Bill is a welcome development. The time has now come for the National Assembly to address matters arising from the Bill...

**Matters Arising**

The Federal Government established the NHF in 1992 as a mandatory contributory scheme to bridge the housing deficit in Nigeria through the mobilization and growth of long-term funds, and provision of affordable loans to eligible borrowers. However, since its commencement, the scheme has yet to achieve desirable success. The dismal performance of the scheme has been attributed to factors, such as administrative bottlenecks in accessing the Fund, public distrust of prudent management of the Fund’s resources by the Government, low return on investment, etc.

Rather than address these challenges, the Bill is replete with many flaws which made it unacceptable to stakeholders who would be impacted by its operation. It is in light of this that the President’s decision to decline his assent to the Bill is a welcome development. The time has now come for the National Assembly to address matters arising from the Bill, some of which are highlighted below, in order to make it fit for purpose:

1. The Bill departs from NHF Act 2004 by specifying “monthly income” as the base for employee contributions as against “basic salary”. However, the Bill does not define “monthly income” which may as well mean “gross income”. This could be onerous for employees whose cash flow will be significantly impacted due to other deductions, such as tax and pension contributions at 8% of monthly
companies and PFAs to invest their assets annually into the Fund is onerous, considering the significantly low interest rate provided, relative to inflation and opportunity cost of investing in alternative instruments with higher returns. The target institutions are commercial entities set up to maximize returns on investment for their investors. They should, therefore, not be burdened to subsidize the Government or any of its programmes in addition to paying their taxes. To make investing in the Fund attractive to these institutions, the appropriate thing to do is for the Government to issue bonds or treasury bills for them to invest in, rather than call for 10% of their PBT.

| 5. | The extant provisions of the NHF Act 2004 and the Bill that mandate banks, insurance 
| 6. | The requirement for regulatory bodies to cancel the operating licences of banks, insurance companies and PFAs on the basis of their failure to invest in the Fund is an overkill, which trivializes a serious matter that could cause systemic crisis. The laws regulating banking, insurance and pension industries already have adequate framework for revocation of licences of the erring operators. This makes the introduction of another ground for revoking an operator’s licence for non-compliance with the Bill unnecessary. An administrative fine would be more appropriate in the circumstances.
| 7. | The penalty of ₦100 million and ₦10 million imposed by the Bill for failure by companies and individuals, respectively, for non-compliance is flawed and unrealistic. The amounts may actually be higher than the turnover of some companies and income of self-employed individuals...
| 8. | The provision requiring the payment of disputed NHF liabilities even when a legal proceeding has been instituted needs to be reviewed. It is more appropriate to maintain the status quo until the dispute is resolved. This is especially as the agencies of Government have no track record of promptly processing refunds to claimants.
9. The Bill is silent on the applicability of the NHF scheme to expatriate employees as it makes an unqualified reference to “employees”; unlike the NHF Act 2004 that specifically refers to “Nigerian workers”. Indeed, it is unnecessary to mandate expatriates, who are temporarily in Nigeria and have no permanent interest in the country, not least home ownership, to contribute to the Fund. The Bill should, therefore, be amended accordingly.

10. The provisions regulating the maximum amount of interest chargeable on mortgage loans granted by the FMB is a welcome development as it could stimulate the required growth of the mortgage sector in Nigeria. However, the Bill should address the issue of duration of mortgage loans by incorporating the provisions of Paragraph 9 of the Subsidiary Legislation (1996) to the NHF Act 2004 which provides for a loan repayment period of 25 years.

11. The three-month period prescribed for a retiring contributor, who does not owe FMB any outstanding loan, to collect his refund from FMB is unduly long. PFAs have a track record of paying retirement benefits to their members in a matter of days to a few weeks. The FMB should be held to an equally high standard.

To conclude, the review of the NHF Act has been long overdue given its poor performance due to its lack of appeal to the generality of its stakeholders. However, the Bill, which was intended to replace it is flawed in many respects, and must be completely overhauled to address the issues highlighted above. For this reason, it is imperative that relevant stakeholders are consulted and their concerns are addressed with a view to producing a more generally acceptable revised Bill for enactment by the National Assembly and assent by the President.