

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1293

RIN 2590-AB29

Fair Lending, Fair Housing, and Equitable Housing Finance Plans

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA or the Agency) is seeking comments on a proposed rule that would address barriers to sustainable housing opportunities for underserved communities by codifying existing FHFA practices in regulation and adding new requirements related to fair lending, fair housing, and Equitable Housing Finance Plans. The proposed rule would improve FHFA's fulfillment of its statutory purposes and its oversight of the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (Banks) (Fannie Mae and Freddie Mac collectively, the Enterprises; the Enterprises and the Banks collectively, regulated entities), and their fulfillment of their statutory purposes.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590-AB29, by any one of the following methods:

- *Agency website:* www.fhfa.gov/open-for-comment-or-input.

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590-AB29.
- *Hand Delivered/Courier:* The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/ RIN 2590-AB29, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590-AB29, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: James Wylie, Associate Director, Office of Fair Lending Oversight, (202) 649-3209, James.Wylie@fhfa.gov; Leda Bloomfield, Branch Chief for Policy and Equity, Office of Fair Lending Oversight, (202) 649-3415, Leda.Bloomfield@fhfa.gov; Annalyce Shufelt, Branch Chief for Fair Lending Law, Supervision, and Enforcement, (202) 717-1164, Annalyce.Shufelt@FHFA.gov; or

Sarah Friedman, Examination Specialist (Fair Lending), Office of Fair Lending Oversight, (202) 807-9324, Sarah.Friedman@FHFA.gov. These are not toll-free numbers. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. Copies of all comments will be posted without change, and will include any personal information you provide such as your name, address, email address, and telephone number, on the FHFA website at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

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I. Introduction

Federal agency oversight of fair housing and fair lending laws, as well as strategic planning to address barriers faced by renters and borrowers, are important in promoting sustainable housing opportunities¹ for underserved communities.² The proposed rule would address barriers to sustainable housing opportunities for underserved communities by codifying existing FHFA practices in regulation and adding new requirements. Collectively, the actions in the proposed rule would improve FHFA's fulfillment of its statutory purposes and its oversight of the regulated entities and their fulfillment of their statutory purposes.

The proposed rule would codify in regulation much of FHFA's existing practices and programs regarding fair housing and fair lending oversight of its regulated entities, the Equitable Housing Finance Plan program for the Enterprises, and requirements for the Enterprises to collect and report language preference, homeownership education, and housing counseling information. The proposed rule would make changes to the Equitable

¹ Sustainable housing opportunity is defined more completely later in the proposed rule, but generally encompasses rental or homeownership opportunities that include one or more characteristics important to the needs of a tenant or homeowner.

² Underserved community is defined more completely later in the proposed rule, but generally encompasses a group of people with shared characteristics or an area that is subject to current discrimination or has been subjected to past discrimination that has or has had continuing adverse effects on the group or area's participation in the housing market, historically has received or currently receives a lower share of the benefits of Enterprise programs and activities providing sustainable housing opportunities, or that otherwise has had difficulty accessing these benefits compared with groups of people without the shared characteristic or other areas.

Housing Finance Plan program to promote greater accountability for the Enterprises and public transparency, add oversight of unfair or deceptive acts or practices to FHFA’s fair housing and fair lending oversight programs, require additional certification of compliance by the Enterprises, and establish more precise standards related to fair housing, fair lending, and principles of equitable housing for regulated entity boards of directors (boards).

II. Background

A. FHFA, the Regulated Entities, and their Public Purposes

Fannie Mae and Freddie Mac are federally chartered housing finance enterprises whose purposes include providing stability to the secondary market for residential mortgages; providing ongoing assistance to the secondary market for residential mortgages (including activities related to mortgages on housing for low- and moderate-income families) by increasing the liquidity of mortgage investments and improving distribution of investment capital available for residential mortgage financing; and, promoting access to mortgage credit throughout the United States, including central cities, rural areas, and underserved areas, by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.³

The Federal Home Loan Bank System (the System) provides a stable and reliable source of liquidity for its members and provides support for affordable housing and community development for the communities they serve. It was established in 1932 by

³ 12 U.S.C. 1451 (note) and 1716.

the Federal Home Loan Bank Act,⁴ and today consists of 11 regional Federal Home Loan Banks (the Banks) and the System's fiscal agent, the Office of Finance. Each Bank is a separate, government-chartered, member-owned corporation.

Congress established FHFA to oversee the regulated entities to ensure that the purposes of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended, the authorizing statutes, and any other applicable laws are carried out.⁵ In doing so, Congress recognized that the regulated entities have important public purposes reflected in their authorizing statutes, and that they need to be managed safely and soundly so that they continue to accomplish their public missions.⁶

With respect to the public purposes of the Enterprises, a number of statutory and regulatory authorities that apply to FHFA and the Enterprises speak to the need to advance equity for homebuyers, homeowners, and tenants in the housing market.⁷

FHFA's principal duties include ensuring that the Enterprises operate consistent with

⁴ 12 U.S.C. 1421 *et seq.*

⁵ 12 U.S.C. 4511(b).

⁶ 12 U.S.C. 4501(1) (Enterprises and Federal Home Loan Banks have important public missions), (2) (their continued ability to accomplish their public missions is important, and effective regulation is needed to reduce risk of failure), and (7) (Enterprises have affirmative obligation to facilitate financing of affordable housing for low- and moderate-income families consistent with their public purposes, while maintaining a strong financial condition and a reasonable economic return).

⁷ These include providing ongoing assistance to the secondary market for residential mortgages, including mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities. 12 U.S.C. 1716(3) and (4) (Fannie Mae charter purposes); 12 U.S.C. 1451 note (b)(3) and (4) (Freddie Mac charter purposes). They also include Enterprise affordable housing Goals, *see* 12 U.S.C. 4561(a), 4562, and 4563; 12 CFR part 1282, subpart B, and Enterprise Duty to Serve affordable housing needs of certain underserved markets, *see* 12 U.S.C. 4565; 12 CFR part 1282, subpart C. In addition, the Enterprises are required to report annually to Congress on, among other things, assessments of their underwriting standards and business practices that affect their purchases of mortgages for low- and moderate-income families, and revisions to their standards and practices that promote affordable housing or fair lending. 12 U.S.C. 1723a(n)(2)(G) (Fannie Mae charter), 1456(f)(2)(G) (Freddie Mac charter).

safety and soundness and with the public interest.⁸ FHFA and the Enterprises also have statutory and other commitments to advance equitable solutions for borrowers and tenants in the housing market. The Enterprises' authorizing statutes, for example, provide that one of their purposes is to promote access to mortgage credit throughout the nation (including central cities, rural areas, and underserved areas).⁹ The authorizing statutes require the Enterprises, as part of their annual housing reports, to assess their underwriting standards, policies, and business practices that affect low- and moderate-income families or cause racial disparities, along with any revisions to these standards, policies, or practices that promote affordable housing or fair lending.¹⁰

The Housing Goals and Duty to Serve requirements are critical elements for ensuring that the Enterprises fulfill their mission and charters and serve low- and moderate-income families and underserved populations.¹¹ The Safety and Soundness Act provides that, in meeting these requirements, the Enterprises are required to take affirmative steps to assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families.¹² The Safety and Soundness Act also requires the Enterprises to transfer an amount equal to 4.2 basis points for each dollar of unpaid principal balance of new purchases to the U.S. Department of Housing and Urban Development's (HUD) administration of the Housing Trust Fund and the U.S.

⁸ 12 U.S.C. 4513(a)(1)(B)(i), (v).

⁹ 12 U.S.C. 1716(4) (Fannie Mae charter); 1451 note (b)(4) (Freddie Mac charter).

¹⁰ 12 U.S.C. 1723a(n)(2)(G), 1456(f)(2)(G).

¹¹ 12 U.S.C. 4561(a) (FHFA to establish annual housing goals by regulation), 4562 (establishment of required categories of single-family housing goals), and 4563 (establishment of required multifamily affordable housing goals); 12 U.S.C. 4565 (Enterprise duty to facilitate secondary mortgage market for very low-, low-, and moderate-income families in certain underserved markets).

¹² 12 U.S.C. 4565(b)(3)(A).

Department of the Treasury’s administration of the Capital Magnet Fund.¹³ Both funds are designed to support affordable housing initiatives by providing capital for the production or preservation of affordable housing and related economic development activities. For the 2022 year, the Enterprises transferred \$545 million into the funds.¹⁴

Several provisions of the Federal Home Loan Bank Act denote the public purposes of the Banks, including their role in making secured long-term advances to members to support residential housing finance, specific community support requirements, establishment of a community investment program and an affordable housing program, compliance with housing goals, and the requirement that certain directors have experience in public interest areas.¹⁵ FHFA launched a comprehensive review of the System in August 2022.¹⁶ Among the areas FHFA has explored as part of the review are the Banks’ role in promoting affordable, sustainable, equitable, and resilient housing and community investment, including rental housing, and in addressing the unique needs of tribal communities, communities of color, rural communities, and other financially vulnerable and underserved communities. Numerous commenters during the public input phases of the initiative suggested establishing or expanding requirements for housing and community development lending plans for the Banks, and these and other suggestions are currently under consideration separately and apart from this proposed rulemaking.

¹³ 12 U.S.C. 4567.

¹⁴ See <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-545-Million-for-Affordable-Housing-Programs.aspx>.

¹⁵ See, e.g., 12 U.S.C. 1427(a)(3)(B)(ii), 12 U.S.C. 1430(g), (i), (j); 12 U.S.C. 1430c.

¹⁶ See <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Comprehensive-Review-of-the-FHLBank-System.aspx>.

Under the Fair Housing Act, all Federal agencies having regulatory or supervisory authority over financial institutions, including FHFA, are required to administer their programs and activities relating to housing and urban development in a manner that affirmatively furthers the purposes of the Fair Housing Act, which includes providing for fair housing throughout the United States.¹⁷ FHFA has included considerations of fair housing and fair lending in rulemaking since its establishment.¹⁸ FHFA has also issued a policy statement on fair lending which describes its regulatory and oversight authorities to supervise and enforce fair lending laws with respect to its regulated entities.¹⁹ FHFA has issued orders to Fannie Mae and Freddie Mac for regular and special reports related to fair housing and fair lending.²⁰ FHFA has issued guidance for the Enterprises on fair housing and fair lending supervisory expectations.²¹ FHFA coordinates with HUD on fair lending and fair housing oversight,²² and has established a fair lending oversight data system in part to facilitate cooperation in interagency fair housing and fair lending

¹⁷ 42 U.S.C. 3608(d); 42 U.S.C. 3601 *et seq.*

¹⁸ *See, e.g.*, 12 CFR 1253.4(b)(3)(viii); 74 FR 31602, 31603, 31606 (Jul. 2, 2009), 12 CFR 1254.6(a)(2) and 1254.8(b)(2); 84 FR 41886, 41905, 41906, 41907 (Aug. 16, 2019), and 12 CFR 1291.23(e); 83 FR 61186, 61208, 61238 (Nov. 28, 2018).

¹⁹ 86 FR 36199 (Jul. 9, 2021).

²⁰ *See* FHFA Orders In Re: Enterprise Compliance and Information Submission with Respect to Fair Lending, Nos. 2021-OR-FNMA-2 and 2021-OR-FHLMC-2 (FHFA's Fair Lending Orders), *available at* <https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Fair-Lending-Oversight-Program.aspx#:~:text=Fair%20Lending%20Reporting%20Orders&text=The%20orders%20require%20the%20Enterprises,lending%20supervision%20and%20monitoring%20capabilities>.

²¹ Advisory Bulletin AB-2021-04, *Enterprise Fair Lending and Fair Housing Compliance* (Dec. 20, 2021), *available at* <https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/AdvisoryBulletinDocuments/AB%202021-04%20Enterprise%20Fair%20Lending%20and%20Fair%20Housing%20Compliance.pdf>.

²² Memorandum of Understanding by and between the U.S. Department of Housing and Urban Development and the Federal Housing Finance Agency regarding Fair Housing and Fair Lending Coordination (Aug. 12, 2021), *available at* https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/FHFA-HUD-MOU_8122021.pdf.

oversight.²³ FHFA has also implemented the referral program for potential mortgage pricing disparities across mortgage lenders based on the Enterprises' data, as required by Congress in section 1128 of the Housing and Economic Recovery Act of 2008 (HERA).²⁴ FHFA also established the Equitable Housing Finance Plan program for the Enterprises to develop a framework for addressing barriers to sustainable housing opportunity for underserved communities through strategic planning and public participation.²⁵ FHFA joined other agencies in issuing the Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B in 2022.²⁶

B. Barriers to Sustainable Housing Opportunities

Ongoing disparities and challenges in the housing market persist, limiting sustainable housing opportunities for underserved communities. The following section discusses some of these disparities and challenges by way of example. Both Enterprises' 2022-2024 Equitable Housing Finance Plans also include extensive discussions of barriers to sustainable housing opportunities.²⁷ The inclusion or discussion of a particular disparity, challenge, or underserved community is not an indication of FHFA's views on

²³ Fair Lending Oversight Data System of Records Notice, 87 FR 30947 (May 20, 2022), *available at* <https://www.govinfo.gov/content/pkg/FR-2022-05-20/pdf/2022-10798.pdf>.

²⁴ Pub. L. 110-289, 122 Stat. 2696, 2697 (2008) (*codified at* 12 U.S.C. 4561(d)).

²⁵ See <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Equitable-Housing-Finance-Plans--for-Fannie-Mae-and-Freddie-Mac.aspx>.

²⁶ See *Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B* (Feb. 22, 2022), *available at* <https://www.federalreserve.gov/supervisionreg/caletters/CA%2022-2%20Attachment%20SPCP%20Interagency%20Statement%20for%20release.pdf>.

²⁷ See *Freddie Mac 2022-2024 Equitable Housing Finance Plan* (Apr. 2023), *available at* <https://www.freddiemac.com/about/pdf/Freddie-Mac-Equitable-Housing-Finance-Plan.pdf>; *Fannie Mae 2022-2024 Equitable Housing Finance Plan* (June 2022), *available at* <https://www.fanniemae.com/media/43636/display>.

the needs of a community or what actions FHFA’s regulated entities should take.

1. Disparities in Homeownership Rates and Wealth

The national homeownership rate has ranged from around 45 percent in some eras to around 65 percent in recent years.²⁸ However, there have been persistent gaps in the homeownership rate by race and ethnicity. In the fourth quarter of 2022, the White homeownership rate was 74.5 percent, the Black homeownership rate was 44.9 percent, the Latino homeownership rate was 48.5 percent, and the Asian, Native Hawaiian and Pacific Islander homeownership rate was 61.9 percent.²⁹ The Black and White homeownership gap, at 29.6 percentage points as of the fourth quarter of 2022, has persisted over time, though there have been some modest reductions in the gap since 2019. Even when the racial homeownership rate is stratified by household income, there continue to be significant disparities in homeownership amongst racial groups, even in the highest income brackets. For example, for households with an income over \$150,000, there exists a 10 percentage point gap between Black and White families.³⁰

A household’s home is often its largest financial asset and key to wealth building and intergenerational wealth transfers. The homeownership gap therefore contributes significantly to wealth gaps for underserved communities. The Federal Reserve, in a 2019 survey, found that White families have the highest level of both median and mean

²⁸ See Don Layton, “The Homeownership Rate and Housing Finance Policy, Part 1: Learning from the Rate’s History,” August 2021, *available at* https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_homeownership_rate_layton_2021.pdf.

²⁹ Federal Reserve Economic Data, Federal Reserve Bank of St. Louis; Housing and Homeownership: Homeownership Rate (retrieved February 11, 2023) *available at* <https://fred.stlouisfed.org/release/tables?rid=296&eid=784188#snid=784199>.

³⁰ See Fannie Mae 2022-2024 *Equitable Housing Finance Plan* (June 2022), p. 7, *available at* <https://www.fanniemae.com/media/43636/display>.

family wealth: \$188,200 and \$983,400, respectively.³¹ In contrast, Black families' median and mean wealth is less than 15 percent that of White families, at \$24,100 and \$142,500, respectively. These wealth disparities have grown between 2003 and 2018.³² One study estimated that the total racial wealth gap is \$10.14 trillion.³³ This lack of intergenerational wealth transfers reduces the likelihood that older generations can assist with down payments, educational costs, and unexpected financial events, including natural disasters and medical emergencies. Black families are also less likely to receive or expect to receive an inheritance, and, if they do, it is, on average, less than that of White households.³⁴ Moreover, many Black, Latino, and Asian households provide financial assistance to older generations, which slows their ability to save for a down payment.³⁵

2. Disparities Based on Disaggregated Data

For many underserved communities, it is critical to examine disaggregated data and data at the community level.³⁶ Failing to disaggregate may result in failure to

³¹ See Neil Bhutta et al., Board of Governors of the Federal Reserve System, “Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances,” (Sept. 28, 2020), *available at* <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.html>.

³² See Earl Fitzhugh et al., McKinsey Institute for Black Economic Mobility, “It’s time for a new approach to racial equity,” (Dec. 2, 2020), *available at* <https://www.mckinsey.com/bem/our-insights/its-time-for-a-new-approach-to-racial-equity>.

³³ See Fred Dews, “Charts of the Week: The racial wealth gap; the middle-class income slump,” Brookings Institution (Jan. 8, 2021), *available at* <https://www.brookings.edu/blog/brookings-now/2021/01/08/charts-of-the-week-the-racial-wealth-gap-the-middle-class-income-slump/>.

³⁴ See Freddie Mac 2022-2024 *Equitable Housing Finance Plan* (Apr. 2023), *available at* <https://www.freddiemac.com/about/pdf/Freddie-Mac-Equitable-Housing-Finance-Plan.pdf>.

³⁵ See Mike Dang, “Their Children Are Their Retirement Plans,” *New York Times* (Feb. 24, 2023), *available at* <https://www.nytimes.com/2023/01/21/business/retirement-immigrant-families.html>.

³⁶ See Leda Bloomfield et al., FHFA Insights Blog, “Latino Diversity and Complexity: The Importance of Data Disaggregation,” (Sept. 23, 2021), *available at* <https://www.fhfa.gov/Media/Blog/Pages/Latino-Diversity-and-Complexity-The-Importance-of-Data-Disaggregation.aspx>.

identify significant disparities facing unique race/ethnicity subgroups for the purpose of identifying barriers and improving housing policy. For example, although Asians and Pacific Islanders as a whole have homeownership rates above 60 percent, Korean Americans' homeownership rate is 54 percent and Nepalese Americans' homeownership rate is 33 percent.³⁷ Geographically, while the overall homeownership gap between Black and White homeowners is 29.6 percentage points, in Minneapolis the gap rises to 50 percentage points.³⁸

There are also disparities in mortgage underwriting that may be obscured by looking at aggregated data.³⁹ For Latino communities, Mexican applicants have slightly higher approval rates than Latino applicants as a whole, but Puerto Rican and "Other Hispanic" applicants have lower approval rates. Among Asian applicants, the Vietnamese, Filipino, and "Other Asian" communities experience lower approval rates than White applicants, despite Asian applicants, as a whole, having similar approval rates to White applicants. Similarly, when the Pacific Islander group is disaggregated, it becomes clear that Samoan and "Other Pacific Islander" applicants have significantly lower approval rates than Native Hawaiian and Chamorro applicants.

3. Challenges Accessing Sustainable Housing Opportunities

In addition to racial and ethnic gaps across homeownership and wealth, there are

³⁷ See Asian Real Estate Association, 2023-2024 State of Asia America Report, available at <https://areaa.org/resource-asia-america-report>.

³⁸ See Alanna McCargo et al., "Mapping the black homeownership gap," (Feb. 26, 2018), available at <https://www.urban.org/urban-wire/mapping-black-homeownership-gap>.

³⁹ See Leda Bloomfield et al., FHFA Insights Blog, "Latino Diversity and Complexity: The Importance of Data Disaggregation," (Sept. 23, 2021), available at <https://www.fhfa.gov/Media/Blog/Pages/Latino-Diversity-and-Complexity-The-Importance-of-Data-Disaggregation.aspx>.

other underserved communities experiencing significant challenges in accessing sustainable housing opportunities. This includes families living on tribal land, in rural areas, and in rental homes. Almost half of renters are cost-burdened, paying more than 30 percent of their income on housing, compared to only 22 percent of homeowners.⁴⁰ As an increasing proportion of households wish to age in place, there is often a lack of housing opportunities that provide for mobility and other physical impairments. By 2035, the population 80 and over is expected to double from its level in 2016. More than 10 million households headed by someone over 65 are cost-burdened, with the median older renter having net wealth under \$6,000 in 2019.⁴¹ Two percent of total housing inventory is accessible for people with mobility disabilities, while 14 percent of Americans have mobility disabilities.⁴² Other populations, including persons identifying as lesbian, gay, bisexual, transgender, or queer (LGBTQ+), continue to report facing challenges in accessing the housing finance system. A study found that same-sex applicants are 73.12 percent more likely to be denied for a mortgage.⁴³ Households with limited English proficiency (LEP), or who are more comfortable transacting in a language other than English, may also experience barriers to housing opportunities and housing sustainability. Often, LEP borrowers will rely on their English-proficient child,

⁴⁰ See National Equity Atlas, “Housing Burden: All residents should have access to quality, affordable homes), (retrieved Mar. 5, 2023) available at https://nationalequityatlas.org/indicators/Housing_burden#/?rentown01=2.

⁴¹ See Jennifer Molinsky, “Housing for America’s Older Adults: Four Problems We Must Address,” Joint Center for Housing Studies of Harvard University (Aug. 18, 2022), available at <https://www.jchs.harvard.edu/blog/housing-america-s-older-adults-four-problems-we-must-address>.

⁴² See Freddie Mac 2022-2024 *Equitable Housing Finance Plan* (Apr. 2023), available at <https://www.freddiemac.com/about/pdf/Freddie-Mac-Equitable-Housing-Finance-Plan.pdf>.

⁴³ See Hua Sun et al., “Lending practices to same-sex borrowers,” (Apr. 16, 2019), available at <https://www.pnas.org/doi/10.1073/pnas.1903592116>.

who may not be familiar with mortgage lending terms, as a translator.⁴⁴ As a result, this can leave the borrower without a full understanding of mortgage terms and conditions.

4. *Mortgage Market Disparities*

Disparities are present in the mortgage market for several underserved communities. For example, in 2022 Black families comprised about 14 percent of the total U.S. population, but only about 7 percent of the loans that Fannie Mae and Freddie Mac purchased. American Indian and Alaska Native families comprised about 3 percent of the total U.S. population, but only about 1 percent of the loans that Fannie Mae and Freddie Mac purchased. In contrast, White families comprised about 62 percent of the U.S. population, but they comprised about 68 percent of Fannie Mae and Freddie Mac acquisitions.⁴⁵

FHFA has released data on Fannie Mae and Freddie Mac's automated underwriting systems, presenting gaps in approval rates for applicants from certain groups over time compared to other groups. These underwriting tools complete credit risk assessments on loan applicants to determine whether a loan is eligible for sale to the Enterprises. Although the move to a more automated, less subjective system to assess creditworthiness in mortgage market underwriting was an important step in eliminating

⁴⁴ See Freddie Mac and Fannie Mae, "Language Access for Limited English Proficiency Borrowers: Final Report," (Apr. 2017), available at <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf>.

⁴⁵ Loan purchase data sourced from Enterprise data released by FHFA at <https://www.fhfa.gov/DataTools/Downloads/Pages/Fair-Lending-Data.aspx>. Total population statistics are drawn from 2020 Census data summarized at <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html>. Total population statistics for White are provided as White alone. Total population statistics for Black and American Indian and Alaska Native are provided as alone or in combination with another race or ethnicity category.

bias in subjective underwriting decisions, further improvements in automated underwriting to reduce gaps would promote better access to sustainable housing opportunities. In 2022, White applicants' automated underwriting system applications had approval rates of about 84 and 85 percent for the automated underwriting systems of Fannie Mae and Freddie Mac, respectively; Black applicants had approval rates of about 70 and 69 percent; Latino applicants had approval rates of about 78 percent and 73 percent; Asian applicants had approval rates of about 84 and 85 percent; American Indian and Alaska Native applicants had approval rates of about 78 and 75 percent; and Native Hawaiian and Pacific Islander applicants had approval rates of about 78 and 74 percent.⁴⁶

Home Mortgage Disclosure Act (HMDA) data also shows higher denial rates by lenders for many underserved communities. For example, an analysis of the 2020 HMDA data found a denial rate of 27.1 percent for Black applicants compared to 13.6 percent for White applicants.⁴⁷ The trend in higher denial rates has persisted in HMDA data for many years.⁴⁸ A 2019 study of mortgage pricing found that Black and Latino borrowers pay 7.9 and 3.6 basis points more in interest for mortgages, even when controlling for several factors.⁴⁹ FHFA conducts an annual screening, preliminary findings, and referral process for lenders pursuant to the Safety and Soundness Act and

⁴⁶ See <https://www.fhfa.gov/DataTools/Downloads/Pages/Fair-Lending-Data.aspx>.

⁴⁷ See Jung H. Choi et al., "What Different Denial Rates Can Tell Us About Racial Disparities in the Mortgage Market," (Jan. 13, 2022), available at <https://www.urban.org/urban-wire/what-different-denial-rates-can-tell-us-about-racial-disparities-mortgage-market>.

⁴⁸ See Laurie Goodman et al., "Traditional Mortgage Denial Metrics May Misrepresent Racial and Ethnic Discrimination," (Aug. 23, 2018), p. 5, available at <https://www.urban.org/urban-wire/traditional-mortgage-denial-metrics-may-misrepresent-racial-and-ethnic-discrimination>.

⁴⁹ See Robert Bartlett et al., Haas School of Business UC Berkely, "Consumer-Lending Discrimination in the FinTech Era," (Nov. 2019), available at <https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf>.

describes the results in its Annual Report to Congress. Based on the results of FHFA’s 2019 and 2020 analysis, more than 36 percent of FHFA’s preliminary findings were based on an annual percentage rate disparity of 10 basis points or more, with the most common preliminary findings and referrals for Latino and Black borrowers.⁵⁰

The Federal Home Loan Bank of San Francisco entered into a research and product development initiative with a research institution to address issues related to the racial homeownership gap.⁵¹ A study resulting from this partnership noted that the heavy reliance on certain credit attributes in the current mortgage underwriting process to the exclusion of other attributes limits opportunities for people of color.⁵²

Additional mortgage market disparities and challenges remain with respect to rural areas, manufactured housing, and other market segments. FHFA’s Duty to Serve program works to address many of these disparities.⁵³

5. Appraisal and Valuation Disparities

FHFA’s Uniform Appraisal Dataset (UAD) Aggregate Statistics highlight that properties located in minority tracts have a higher proportion of appraised values less than the contract price. According to the 2021 appraisal statistics, 23.3 percent of homes in high minority tracts (80.1-100 percent) experienced an appraised value less than the

⁵⁰ See Federal Housing Finance Agency, 2021 Report to Congress, p. 67, available at <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA-2021-Annual-Report-to-Congress.pdf>.

⁵¹ See https://fhlsf.com/about/newsroom/urban-institute-and-fhlbank-san-francisco-announce-new-efforts-close-racial?f%5B0%5D=authored_on%3A2021.

⁵² See Jung H. Choi et al., Urban Institute and Federal Home Loan Bank of San Francisco, “Reducing the Black-White Homeownership Gap through Underwriting Innovations: The Potential Impact of Alternative Data in Mortgage Underwriting,” available at <https://www.urban.org/sites/default/files/2022-10/Reducing%20the%20Black-White%20Homeownership%20Gap%20through%20Underwriting%20Innovations.pdf>.

⁵³ See <https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Duty-to-Serve.aspx>.

contract price.⁵⁴ This is compared to 13.4 percent of homes in White tracts (0-50 percent) and 19.2 percent in minority tracts (50.1-80 percent).⁵⁵ Additionally, FHFA identified examples with direct references to the racial and ethnic composition of the neighborhood in appraisal reports.⁵⁶ Freddie Mac’s research showed that properties in minority tracts are more likely than properties in White tracts to receive an appraisal lower than the contract price.⁵⁷ A Fannie Mae publication concluded that White borrowers’ homes were overvalued at higher rates across all neighborhoods, but stronger effects were present for White borrowers in Black neighborhoods.⁵⁸ Additional research has also highlighted and analyzed disparities in property valuation.⁵⁹ Consumer groups have begun to conduct fair housing paired testing of appraisers, resulting in the filing of

⁵⁴ See Jonathan Liles, “Exploring Appraisal Bias Using UAD Aggregate Statistics,” FHFA Insights Blog (Nov. 11, 2022), available at <https://www.fhfa.gov/Media/Blog/Pages/Exploring-Appraisal-Bias-Using-UAD-Aggregate-Statistics.aspx>.

⁵⁵ For 2022, 17.15 percent of home purchase appraisals were below contract price in high minority tracts, compared to 14.3 percent in minority tracts and 11.2% in White tracts. Uniform Appraisal Dataset Aggregate Statistics, available at <https://www.fhfa.gov/DataTools/Pages/UAD-Dashboards.aspx>.

⁵⁶ See Chandra Broadnax, “Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary,” FHFA Insights Blog (Dec. 14, 2021), available at <https://www.fhfa.gov/Media/Blog/Pages/Reducing-Valuation-Bias-by-Addressing-Appraiser-and-Property-Valuation-Commentary.aspx>.

⁵⁷ See Melissa Narragon et al., “Racial & Ethnic Valuation Gaps in Home Purchase Appraisals – A Modeling Approach,” (May 2022), available at <https://www.freddiemac.com/research/insight/20220510-racial-ethnic-valuation-gaps-home-purchase-appraisals-modeling-approach>; Freddie Mac, “Racial and Ethnic Valuation Gaps in Home Purchase Appraisals,” (Sept. 20, 2021), available at <https://www.freddiemac.com/research/insight/20210920-home-appraisals>.

⁵⁸ See Jake Williamson et al., “Appraising the Appraisal,” (Feb. 2022) available at <https://www.fanniemae.com/media/42541/display>.

⁵⁹ See, e.g., Andre Perry et al., The Brookings Institution, “The Devaluation of Assets in Black Neighborhoods: The Case of Residential Property (Nov. 27, 2018), available at <https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/>; Junia Howell et al., “Appraised: The Persistent Evaluation of White Neighborhoods as More Valuable Than Communities of Color,” (Nov. 2022), available at <https://www.eruka.org/appraised>; Edward Pinto et al., American Enterprise Institute, “How Common is Appraiser Racial Bias – An Update,” (May 2022), available at <https://www.aei.org/wp-content/uploads/2022/06/How-Common-is-Appraiser-Racial-Bias-An-Update-May-2022-FINAL-corrected-1.pdf?x91208>.

complaints.⁶⁰ Rural markets also experience challenges related to appraiser availability and appraisal cost.⁶¹

III. The Proposed Rule

A. FHFA Fair Lending Oversight of the Regulated Entities

The proposed rule would codify in regulation FHFA’s existing fair lending oversight functions with respect to the regulated entities, including conducting supervisory examinations, issuing examination findings, requiring regular and special reporting and data, and enforcement. The proposed oversight would be substantially the same as FHFA’s current fair lending oversight functions, but would establish FHFA’s oversight of potential unfair or deceptive acts or practices by the regulated entities and would require the regulated entities to file certifications of compliance with fair lending and fair housing laws with regular and special reports. It would additionally establish more precise standards related to fair housing and fair lending and principles of equitable housing for regulated entity boards of directors.

B. Enterprise Equitable Housing Finance Plans

The proposed rule would codify FHFA’s current requirements for the Enterprises’ Equitable Housing Finance Plans. The proposed plan requirements would be substantially the same as FHFA’s current requirements for the Enterprises’ plans, but would establish additional public disclosure and reporting requirements and expanded

⁶⁰ Jake Lilien, National Community Reinvestment Coalition, “Faulty Foundations: Mystery-Shopper Testing in Home Appraisals Exposes Racial Bias Undermining Black Wealth,” (Oct. 2022), *available at* <https://ncrc.org/faulty-foundations-mystery-shopper-testing-in-home-appraisals-exposes-racial-bias-undermining-black-wealth/>.

⁶¹ See FHFA, Request for Information on Appraisal-Related Policies, Practices, and Processes (Dec. 28, 2020), p. 4, *available at* <https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/RFI-Appraisal-Related-Policies.pdf>.

program requirements. Codifying the Enterprises' plan requirements with additions in a regulation would make the Enterprises' obligations more explicit and transparent to the public and would also establish greater accountability mechanisms through FHFA's statutory enforcement and compliance authorities.

The proposed rule has some similar elements to the HUD's affirmatively furthering fair housing rules and requirements.⁶² HUD's framework provides helpful guidance and information on an equity planning process that affirmatively furthers fair housing. HUD's framework has informed FHFA in its development of the proposed rule, but FHFA has also taken into account the unique features of the Enterprises, its experience in overseeing the program to date, and the views of stakeholders as part of FHFA's requests for input and listening sessions to develop the proposed rule.

C. Enterprise Data Collection and Reporting to FHFA

The proposed rule would require the Enterprises to collect, maintain, and report data on language preference, homeownership education, and housing counseling for applicants and borrowers. The Enterprises collect this data through their automated underwriting systems and loan delivery. The Enterprises also provide a standard form for collection of the data – the Supplemental Consumer Information Form. The proposed rule would codify the FHFA policy announced in May 2022 for mandatory use of the Supplemental Consumer Information Form.⁶³ Consistent with current policy, the proposed rule would not require applicants and borrowers to respond to a language

⁶² See, e.g., 24 CFR 5.150 *et seq.*

⁶³ See <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Mandatory-Use-of-the-Supplemental-Consumer-Information-Form.aspx>.

preference question, and applicants and borrowers may be provided with the option to not respond to a question about language preference as part of the information collection to satisfy the proposed rule.

D. Application of FHFA's Prudential Standard Framework

Section 4513b of the Safety and Soundness Act (12 U.S.C. 4513b(b)) requires FHFA to establish prudential management and operations standards for its regulated entities, authorizes FHFA to establish such standards by regulation or guideline, and establishes a corrective action framework if a regulated entity fails to meet a prudential standard.⁶⁴ To implement section 4513b, FHFA has adopted a Prudential Management and Operations Standards (PMOS) regulation, at 12 CFR part 1236, and an Appendix to that regulation. The PMOS regulation is primarily procedural; for example, it addresses FHFA determinations that a regulated entity has failed to meet a standard; provides that FHFA may base that determination on an examination, inspection, or any other information; and addresses the contents and filing deadlines for corrective plans.⁶⁵ The PMOS regulation also codifies FHFA's authority to require a regulated entity to submit a PMOS corrective plan in conjunction with other required submissions.⁶⁶ If a regulated entity fails to submit a corrective plan or fails to implement an approved corrective plan, the PMOS regulation addresses FHFA's statutory authority to order the regulated entity to correct the deficiency or to undertake additional corrective or remedial measures as FHFA may require.

The Appendix sets forth substantive prudential management and operational

⁶⁴ 12 U.S.C. 4513b(b)(2)(B).

⁶⁵ 12 CFR 1236.4(a).

⁶⁶ 12 CFR 1236.4(c)(2)(ii).

standards (Standards) that FHFA has established as guidelines, including a statement on General Responsibilities of the Board and Management and ten numbered Standards. These Standards contain many elements that are relevant to components of the proposed rule, such as responsibilities for boards and senior management with respect to appropriate business strategies and policies; standards for internal controls and information systems; maintenance of records; alignment of the overall risk profile with mission objectives; internal audit; compliance with laws, regulations, and supervisory guidance; and others. Therefore, compliance with the proposed rule, if finalized, would be subject to applicable Standards and could be addressed through the PMOS corrective framework.

Separately, the proposed rule would establish Subpart C, Enterprise Equitable Housing Finance Planning, except for § 1293.26, as a prudential standard within the meaning of section 4513b. FHFA has determined that it is legally appropriate and would be sound policy to identify that subpart as a prudential standard. The Enterprise equitable housing finance planning framework, as discussed above, is consistent with the Enterprises' authorizing statute obligations and FHFA's statutory charges related to ensuring regulated entities operate consistent with the public interest and that FHFA furthers fair housing in its oversight of the regulated entities. In addition to the more general application of the PMOS framework through the Standards discussed above, this designation of the equitable housing finance planning framework as a Standard by regulation would provide FHFA access to section 4513b corrective measures, if necessary, to address deficiencies in equitable housing finance planning or implementation by an Enterprise. Section 1293.26 is proposed to be excluded from the

designation because that section articulates a broader concept related to ensuring Enterprise boards appropriately consider the equitable housing finance plan alongside other longstanding mission responsibilities in their oversight of an Enterprise and not the required elements and process for an Equitable Housing Finance Plan.

Section 4513b makes clear that corrective actions pursuant to the PMOS framework are in addition to any enforcement action FHFA would be authorized to take, if FHFA determined that an Enterprise has violated any regulation.⁶⁷ Thus the PMOS framework does not limit FHFA's authorities and FHFA will determine the appropriate supervisory response based on the facts and circumstances of any failure or violation.

E. Policy Purposes for and Benefits of the Proposed Rule

All communities in the United States deserve access to sustainable housing opportunities and well-functioning housing markets. As acknowledged through the Duty to Serve requirements, housing goals framework, and the Agency and the regulated entities' public purposes, enumerated protected classes under fair housing and fair lending laws are not the only underserved communities in the United States. The proposed rule's incorporation of broad protections for consumers under prohibitions against unfair or deceptive acts or practices, and defining underserved communities broadly for the purposes of Equitable Housing Finance Plans, will help ensure the Agency and the regulated entities focus on underserved communities throughout the United States, consistent with the Enterprises' Charter Acts, the Agency's public interest duty, and the purposes of the Fair Housing Act. The proposed rule will add to the Agency's existing set of programs and tools to accomplish these goals.

⁶⁷ 12 U.S.C. 4513b(c).

By codifying many of FHFA's existing requirements and policies regarding fair lending oversight, Enterprise Equitable Housing Finance Plans, and language preference and homeownership education and housing counseling data collection, as well as expanding certain requirements, the proposed rule serves a number of policy purposes and would provide a number of policy benefits.

Consistent oversight of fair housing and fair lending, along with public participation and accountability, have been key issues that impact the fair housing and fair lending compliance by financial institutions and housing market actors. Codifying the requirements and policies through rulemaking will provide greater public transparency and input regarding the existing programs, as well as greater assurance of the Agency's commitment. Codifying existing fair housing and fair lending requirements and enhancing them will provide greater oversight and accountability regarding the regulated entities' fair housing and fair lending compliance and therefore benefit the public who are ultimately protected by fair housing and fair lending laws.

Strategic planning for improvements in fair housing has been a key component of fulfilling commitments to affirmatively further fair housing and is an important way in which progress toward providing for fair housing throughout the United States can be made. Codifying Equitable Housing Finance Plans in regulation and providing additional standards through rulemaking will ensure that fair housing issues can be addressed proactively in addition to reactively through supervision and examinations.

Establishing enhanced standards and transparency for fair housing and fair lending generally, and for the Equitable Housing Finance Plans, may also have the benefit of providing greater market assurance with respect to the regulated entities'

compliance with applicable laws, thereby supporting liquidity in the secondary mortgage market and support for underserved communities.

IV. Section-by-Section Analysis

A. Section 1293.1 General

Subpart A of the proposed rule would provide general information, rules, definitions, and compliance and enforcement provisions that apply to all of proposed part 1293. Proposed § 1293.1(a) would provide general information and rules, including fair lending oversight of the regulated entities, equitable housing finance planning by the Enterprises, and data collection and reporting by the regulated entities (currently only including requirements for the Enterprises). Proposed § 1293.1(b) would provide that nothing in proposed part 1293 permits or requires a regulated entity to engage in any activity that would otherwise be inconsistent with the Safety and Soundness Act, the authorizing statutes, or other applicable law. FHFA believes it is important to reiterate in the proposed rule that activities must be in keeping with safety and soundness. Without safety and soundness underlying the regulated entities' activities, they cannot truly promote fair housing, fair lending, and principles of housing equity. As discussed later, FHFA is also adding the prohibition on unfair or deceptive acts or practices to the laws it oversees with respect to the regulated entities. FHFA believes that underscoring the importance of safety and soundness and avoiding unfair or deceptive acts or practices complements and enhances the pursuit of solutions that further fair housing, fair lending, and principles of housing equity and makes clear that predatory products or activities would not be in furtherance of the proposed rule. Proposed § 1293.1(c) would provide that nothing in proposed part 1293 creates a private right of action.

B. Section 1293.2 Definitions

Proposed § 1293.2 would provide definitions that apply to proposed part 1293.

The proposed definition of “Equitable Housing Finance Plan” (plan) is a key component of subpart C of the proposed rule. It is a three-year public plan developed with public engagement and adopted by each Enterprise describing how each Enterprise will overcome barriers to sustainable housing opportunities faced by one or more underserved communities through objectives, meaningful actions, and measurable goals. The plan is a key element of the proposed rule, and its requirements are more fully described in proposed §§ 1293.22 and 1293.25. The proposed definition of “annual plan update” (update) is a public update to a plan for the second or third year of a planning cycle. The proposed definition of “performance report” (report) is an annual public report by an Enterprise on its performance under a plan and other information on equitable housing and fair lending that meets the requirements of proposed § 1293.23 and any other FHFA requirements.

The proposed definition of “barrier” is an important element of a plan. As part of a plan, an Enterprise would be required to identify barriers faced by an underserved community. The proposed definition includes Enterprise actions, products, or policies as well as aspects of the housing market that can reasonably be influenced by an Enterprise’s actions, products, or policies that contribute to an underserved community’s limited share of sustainable housing opportunities, difficulties in accessing those sustainable housing opportunities, or the continuing adverse effects of discrimination affecting their participation in the housing market. The proposed definition focuses on an Enterprise’s own actions, products, or policies because these are what an Enterprise can

most easily change. Including aspects of the housing market that can reasonably be influenced by an Enterprise's actions, in addition to an Enterprise's own actions, products, or policies, encourages actions that serve the public interest, promote access to mortgage credit throughout the nation, and further fair housing.

The proposed definition of "fair housing and fair lending laws" provides an enumeration of Federal fair housing and fair lending laws to which the regulated entities are subject and FHFA oversees pursuant to the fair lending oversight described in the proposed rule. The "fair housing and fair lending laws" are the Fair Housing Act, the Equal Credit Opportunity Act, and implementing regulations. Additionally, with respect to an Enterprise, the "fair housing and fair lending laws" include 12 U.S.C. 4545 and implementing regulations.

The proposed definition of "sustainable housing opportunity" relates to the scope and type of the benefits that the plans should seek to achieve for underserved communities through meaningful actions. The proposed definition includes both rental and homeownership opportunities that include one or more characteristics important to the needs of a tenant or homeowner within its scope and includes several illustrative characteristics of the concept, including affordability, habitability, resilience to climate impacts, quality, locational benefits, accessibility, long-term sustainability, and accommodations for short-term hardships. These are important features of housing opportunities that should help focus the Enterprises' plans. Further standards related to the proposed definition are provided in proposed § 1293.25.

The proposed definition of "underserved community" is an important element of a plan. An Enterprise chooses one or more underserved communities on which to focus for

a planning cycle. “Underserved community” would be defined as a group of people with shared characteristics or an area that is subject to current discrimination or has been subjected to past discrimination that has or has had continuing adverse effects on the group or area’s participation in the housing market, historically has received or currently receives a lower share of the benefits of Enterprise programs and activities providing sustainable housing opportunities, or that otherwise has had difficulty accessing these benefits compared with groups of people without the shared characteristic or other areas. The proposed definition includes characteristics protected by fair lending laws applicable to the Enterprises, but the definition is not limited to such characteristics. The definition provides illustrative examples, if supported by adequate information under the requirements of proposed § 1293.25. The proposed definition makes clear that a variety of groups or areas could be chosen by an Enterprise. The inclusion or exclusion of any particular group from the illustrative examples is not an indication of FHFA’s views about whether or not that group constitutes an underserved community or whether it should be the focus of a plan.

C. Section 1293.3 Compliance and Enforcement

Proposed § 1293.3 reiterates general FHFA authority related to compliance and enforcement for proposed part 1293, inclusive of all aspects of the proposed rule. FHFA has broad authority for compliance and enforcement. This section notes FHFA’s ability to conduct examinations related to proposed part 1293, including fair lending compliance, equitable housing finance, and other matters. It also notes FHFA’s ability to issue adverse examination findings and take various forms of enforcement actions and issue civil money penalties under 12 U.S.C. 4511(b), 4513b, 4631, and 4636. This

section is similar to other sections of FHFA regulations related to oversight of specific programmatic areas⁶⁸ and the FHFA fair lending policy statement.⁶⁹

Some examples of how FHFA’s compliance and enforcement authority could be used with respect to fair lending oversight, equitable housing finance, or data collection or reporting include, but are not limited to:

- If FHFA found that a regulated entity had insufficient compliance management around fair lending laws or the proposed rule, FHFA could issue adverse examination findings and factor the insufficient compliance management into supervisory ratings;
- If FHFA found that a regulated entity had violated the Fair Housing Act, FHFA could issue adverse examination findings, factor the non-compliance into supervisory ratings, and enter into a consent order with the regulated entity requiring corrective action, additional remedies, and civil money penalties;
- If an Equitable Housing Finance Plan, annual update, performance report, or an Enterprise’s actions taken under the program did not meet the requirements of this proposed rule, FHFA could issue an adverse examination finding, factor non-compliance into supervisory ratings, and issue a prudential management operating standard notice requiring the entity to submit a corrective plan; and

⁶⁸ See, e.g., 12 CFR 1223.24.

⁶⁹ See FHFA, “Policy Statement on Fair Lending,” (Jul. 9, 2021), *available at* <https://www.govinfo.gov/content/pkg/FR-2021-07-09/pdf/2021-14438.pdf>.

- If FHFA found that a regulated entity had not complied with required data collection or reporting, FHFA could issue an adverse examination finding, factor non-compliance into supervisory ratings, and enter into a written agreement with the regulated entity.

Neither this section of the proposed rule or the examples given above are intended to limit FHFA's authority in any way. This section merely restates some of the most applicable FHFA authority.

D. Section 1293.4 Preservation of Authority

Proposed § 1293.4 would provide that nothing in the proposed rule would in any way limit the authority of the agency under other provisions of applicable law and regulations.

E. Section 1293.11 Regulated Entity Compliance

Subpart B of the proposed rule applies to all regulated entities and provides standards related to compliance, responsibilities of boards of directors, reports, data, and certification. Proposed § 1293.11 addresses regulated entity compliance with fair housing and fair lending laws. Proposed § 1293.11(a) states that regulated entities must comply with the Fair Housing Act, the Equal Credit Opportunity Act, and 12 U.S.C. 4545 for the Enterprises. Proposed § 1293.11(b) would provide that the regulated entities must comply with 15 U.S.C. 45 (Section 5 of the Federal Trade Commission Act), which prohibits unfair or deceptive acts or practices. The prohibition against unfair or deceptive acts or practices is an important protection under Federal law for consumers and other

market actors against predatory and deceptive actions,⁷⁰ and FHFA has determined it would be appropriate to oversee the regulated entities for compliance with this statute. Violations of these laws by the regulated entities would, in addition, violate § 1293.11(a) and (b) as proposed.⁷¹ The Safety and Soundness Act empowers FHFA to oversee its regulated entities' compliance with "other applicable law," 12 U.S.C. 4511(b)(2), and to engage in enforcement for noncompliance with law.⁷² Other Federal financial regulators examine and oversee their regulated entities on these or similar bases as part of consumer protection under similar authority.⁷³ While FHFA is including unfair or deceptive acts or practices in the proposed rule because they are similar to fair lending laws in the intent to ensure fair treatment, FHFA understands unfair or deceptive acts or practices to encompass a broad scope of activities harmful to individuals that go beyond illegal discrimination.

Proposed § 1293.11(c) would establish more precise standards related to fair housing and fair lending and the prohibition on unfair or deceptive acts or practices for regulated entity boards of directors in carrying out their existing responsibility under FHFA's Corporate Governance regulation (12 CFR part 1239) to direct the operations of

⁷⁰ Kathleen C. Engel et al., *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 *Tex. L. Rev.* 1255, 1260 (2002) (noting that lending fraud or deceptive practices "come[] in endless varieties"). Ngai Pindell, *The Fair Housing Act at Forty: Predatory Lending and the City As Plaintiff*, *J. Affordable Housing & Community Dev. L.*, Winter 2009, at 173-75 (describing contemporary unfair and predatory lending practices).

⁷¹ *See, e.g.*, 12 U.S.C. 4636.

⁷² 12 U.S.C. 4631. FHFA's cease-and-desist authority is similar to Section 8 of the Federal Deposit Insurance Act under which the FDIC (for example) enforces unfair and deceptive acts or practices.

⁷³ *See, e.g.*, Federal Deposit Insurance Corporation (FDIC) Guidance on Unfair or Deceptive Acts or Practices, FIL-57-2002 (May 30, 2002), available at <https://www.fdic.gov/news/inactive-financial-institution-letters/2002/fil0257.html>. *See also* HUD's Mortgagee Letter 2014-10 (ML 2014-10), available at <https://www.hud.gov/sites/documents/14-10ML.PDF> (HUD letter "remind[ing] mortgagees of the Federal Housing Administration's (FHA) requirements prohibiting misleading or deceptive advertising").

the regulated entities in conformity with FHFA regulations. FHFA’s Corporate Governance regulation provides that the ultimate responsibility for a regulated entity’s oversight rests with the board of directors, and that directors have a duty to direct the operations of a regulated entity in conformance with the authorizing statutes, the Safety and Soundness Act, and FHFA regulations.⁷⁴ Board and management oversight of fair housing and fair lending compliance has long been recognized as a critical component of a well-functioning compliance management system. Federal financial regulators regularly examine their regulated entities for sufficient fair lending compliance management, and rate regulated entities based in part on Board and Management Oversight.⁷⁵ Consent orders for fair housing and fair lending violations frequently include specific requirements for enhanced Board and Management Oversight.⁷⁶ The standard articulated in the proposed rule is intended to provide more clarity and guidance to directors in how to incorporate the proposed rule into the pre-existing duty under the Corporate Governance regulation to direct operations in conformity with FHFA regulations. The proposed rule’s language on “appropriately considering” compliance with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices are intended to be flexible and tailored to the particular consideration at hand,

⁷⁴ 12 CFR 1239.4.

⁷⁵ *See, e.g.*, Federal Financial Institutions Examination Council, Uniform Interagency Consumer Compliance Rating System, 81 FR 79473 (Nov. 14, 2016) (outlining expectations for Board and Management Oversight in consumer compliance management, including fair lending); Federal Financial Institutions Examination Council, Interagency Fair Lending Examination Procedures, *available at* <https://www.fdic.gov/regulations/examinations/fairlend.pdf> (detailing examiners’ engagement with management and review of management oversight).

⁷⁶ *See, e.g.*, *United States v. Cadence Bank* Consent Order, *available at* <https://www.justice.gov/crt/case-document/file/1429051/download#:~:text=%C2%A7%C2%A7%201691%2D1691f.&text=L.,%2C%20color%2C%20and%20national%20origin>.

while reinforcing the broad application of fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices on a regulated entity's operations and the board's ultimate responsibility for the regulated entity's oversight.

F. Section 1293.12 Reports and Data

Proposed § 1293.12 would provide that FHFA may require the regulated entities to provide to FHFA regular and special reports, including the provision of data, concerning fair lending and fair housing. FHFA has issued fair lending reporting orders to Fannie Mae and Freddie Mac requiring regular reports.⁷⁷ FHFA has not issued fair lending reporting orders to the Banks, and FHFA is not proposing to require specific reports of the Banks through this proposed rule. FHFA would plan to issue such reporting orders at an appropriate time, if deemed necessary.

Proposed § 1293.12 also provides that each regular report related to fair housing and fair lending shall include a certification of the regulated entity's compliance with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices in addition to any other required certification or declaration (such as a declaration under 12 U.S.C. 4514(a)(4)). Under FHFA's regular and special report authority under 12 U.S.C. 4514(a)(4), each report must contain a declaration from an officer that the report is true and correct to the best of such officer's knowledge and belief. This section would add an additional requirement for a certification that the regulated entity complies with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or

⁷⁷ See FHFA's Fair Lending Orders, available at <https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Fair-Lending-Oversight-Program.aspx#:~:text=Fair%20Lending%20Reporting%20Orders&text=The%20orders%20require%20the%20Enterprises,lending%20supervision%20and%20monitoring%20capabilities.>

practices for reports related to fair housing and fair lending. This certification requirement would provide additional incentive to the boards and management of the regulated entities to ensure compliance with fair housing and fair lending laws in their operations. Both Enterprises require their seller/servicers to attest to compliance with fair housing and fair lending laws.⁷⁸ Certifications related to compliance are commonly used by other Federal agencies, including with respect to federal housing grants, such as Community Development Block Grants, and consent decrees and settlement agreements by the Department of Justice and HUD in housing and lending discrimination cases.

FHFA is not proposing to include the specific certification language in the rule, instead merely the general requirement. FHFA believes this would allow flexibility for FHFA to make changes to the specific certification language when necessary. However, FHFA seeks comment on the following certification language: “[Regulated entity] complies and has complied in all material respects with, and maintains policies, procedures, and internal controls to assure compliance with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices.” If a regulated entity did not believe it could certify to that or similar language for a particular period, such as because FHFA had identified fair lending non-compliance in a supervisory examination that the regulated entity was still remediating, and the regulated entity would not be able to complete remediation by the time of certification, it could notify FHFA in advance to discuss additional stipulations to the language.

⁷⁸ See Fannie Mae Selling Guide, Compliance with Laws available at <https://selling-guide.fanniemae.com/Selling-Guide/Doing-Business-with-Fannie-Mae/Subpart-A3-Getting-Started-with-Fannie-Mae/Chapter-A3-2-Compliance-with-Requirements-and-Laws/1645975681/A3-2-01-Compliance-With-Laws-07-06-2022.htm> and Freddie Mac Seller/Service Guide, Compliance with Applicable Law available at <https://guide.freddiemac.com/app/guide/section/1301.2/03-01-2023>.

G. Section 1293.21 General

Proposed § 1293.21 provides general information that Subpart C of the proposed rule, entitled Enterprise Equitable Housing Finance Planning, sets forth the Enterprises' duty to engage in equitable housing finance planning and establishes standards and procedures related to public engagement and FHFA's oversight of the Enterprises' planning and actions. It provides for general timing requirements when a date falls on a non-business day. It also provides that submission requirements and publication dates provided in the proposed rule may be altered or waived by the Director by publication of a public order. As discussed above, it also designates Subpart C, except for § 1293.26, as a prudential standard.

H. Section 1293.22 Plans and Updates

Proposed § 1293.22 provides rules related to plans and updates.

Proposed § 1293.22(a) would establish the general requirement for each Enterprise to adopt a plan covering a three-year period, with optional updates in the second and third year of the plan period.

Proposed § 1293.22(b) establishes general content requirements for the plan, including an identification of barriers to sustainable housing opportunities faced by one or more underserved communities, objectives that define the outcomes the plan seeks to accomplish that address the identified barriers, meaningful actions that describe the high-impact activities that the Enterprise will undertake to accomplish or further the identified objectives, which may span one or more years (including extending beyond the period covered by the plan); specific, measurable, and time-bound goals for those actions; and summaries of the Enterprise's public engagement in developing the plan.

Proposed § 1293.22(c) would establish a requirement for an Enterprise to submit a plan to FHFA for review on or before September 30 of the year prior to the first year covered by the plan.

Proposed § 1293.22(d) would establish general content requirements for an update, including all changes the Enterprise is making to its plan and a summary of any additional public engagement.

Proposed § 1293.22(e) would establish a requirement for an Enterprise to submit an update to FHFA for review on or before February 15 of the year covered by the update.

Proposed § 1293.22(f) would establish standards for FHFA's review of plans and updates. It would provide that FHFA may review each plan and update prior to publication and may require removal of any confidential or proprietary information; require removal of any content that is not consistent with part 1293, the Safety and Soundness Act, the authorizing statutes, or other applicable law; provide any feedback for consideration; and exercise any other authority of FHFA. Inclusion of confidential or proprietary information in plans and updates would be inappropriate and reveal sensitive information that is not required under the proposed rule. Further, FHFA's review may identify proposals and plan content that are contrary to the Enterprise's authorizing statutes, the Safety and Soundness Act, or other applicable law. FHFA also retains all other existing authority that may be needed in particular circumstances to address issues that arise during the review of a plan or update. Given that a plan may only contain limited information about a proposed action, FHFA may identify issues with the activity through other processes, such as prior approval of new products, or its supervision and

oversight of the Enterprises. FHFA’s review of the plan would not preclude using these processes and FHFA’s full authorities if it were to later identify issues with the action, and the public engagement opportunities throughout the plan cycle would give FHFA additional information from the public for this purpose.

Proposed § 1293.22(g) would provide that FHFA’s review does not constitute a prior approval of a plan or update or any action described therein and that all actions included in a plan are subject to all applicable FHFA and other requirements and authorities. For example, a meaningful action that met the criteria for a new activity or new product would be subject to the process described in FHFA’s prior approval for Enterprise products regulation.⁷⁹ FHFA believes that the process established by the proposed rule would help support the prior approval for Enterprise products regulation by providing both FHFA and the public information about activities being considered by the Enterprises that may later trigger the requirements of the regulation.

Proposed § 1293.22(h) would provide that plans and updates must include disclaimer language indicating the implementation of actions may be subject to change based on certain factors. The disclaimer language in the current plans is:

“DISCLAIMER: Implementation of the activities and objectives in [Enterprise]’s Equitable Housing Finance Plan may be subject to change based on factors including, without limitation, FHFA review for compliance with [Enterprise]’s statutory charter, specific FHFA approval requirements and safety and soundness standards, FHFA guidance and directives, regulatory requirements, Senior Preferred Stock Purchase Agreement obligations, and adverse market or economic conditions, as applicable.”

⁷⁹ 12 CFR part 1253.

FHFA seeks comment on this disclaimer language and any changes that should be made.

Proposed § 1293.22(i) would provide that each Enterprise shall publish its plan on January 15 of the first year covered by the plan, and each annual update on April 15 of the second and third year covered by the plan. It would also provide that the Enterprise maintain the plan on its website thereafter and that it ensures that the plans or updates are accessible to persons with disabilities.

Proposed § 1293.22(j) would provide that from time to time, FHFA may issue public guidance on plans and updates.

I. Section 1293.23 Performance Reports

Proposed § 1293.23 would provide rules related to annual performance reports (reports). Proposed § 1293.23(a) would establish the general requirement for each Enterprise to publicly report on its plan progress and provide other information related to equitable housing and fair lending annually for the prior year in a report.

Proposed § 1293.23(b) would establish requirements for the contents of the report, including: a narrative assessment about the program; performance details for each objective, measurable goal, and meaningful action; general outcomes categorized by group; summary of resources dedicated to the plan; and an assessment of the Enterprise's underwriting that includes several elements. The report section on underwriting is similar in nature to the authorizing statutes' requirements for assessing underwriting standards that may yield disparate results based on the race of the borrower, including revisions thereto that may promote fair lending, and reporting on this assessment under

the Annual Housing Activities Report.⁸⁰ FHFA believes that the proposed rule provides an opportunity to incorporate this concept into a fair lending-focused report and provide details based on it into reporting under the Equitable Housing Finance Plans.

Proposed § 1293.23(c) would establish a requirement for an Enterprise to submit a report to FHFA for review on or before February 15 annually.

Proposed § 1293.23(d) would establish standards for FHFA's review of reports. The standards would align with the review standards for plans and updates.

Proposed § 1293.23(e) would establish a requirement for an Enterprise to publish its report on April 15 annually. It would also require that the report be maintained on the Enterprise's website and that the Enterprise ensures that reports are accessible to persons with disabilities.

Proposed § 1293.23(f) would establish that FHFA may issue public guidance on reports and also notes that FHFA may require additional information in reports through other authorities, such as its authority to require regular reports under 12 U.S.C. 4514. FHFA believes that this authority may be helpful in establishing reporting requirements in an expedited fashion for specific plans given the differing nature of underserved communities and activities that may be included in plans and the ongoing public engagement that is a part of the process established by the proposed rule.

J. Section 1293.24 Public Engagement

Proposed § 1293.24 establishes requirements related to public engagement.

⁸⁰ *See, e.g.*, 12 U.S.C. 1723a(n)(2)(G) (“assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures, that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending;”).

Proposed § 1293.24(a) provides that on or before June 15 annually, FHFA will conduct public engagement to gather public input for the Enterprises and for FHFA to consider. FHFA’s 2021 request for input and listening session on the initial Equitable Housing Finance Plan program provided valuable input and the proposed rule would therefore codify these or similar types of public engagement as a requirement for future plans.⁸¹

Proposed § 1293.24(b) of the proposed rule would provide that the Enterprises are required to consult with stakeholders, including members of underserved communities and housing market participants, in development of a plan and update and describe such consultation in the plan.

K. Section 1293.25 Program Standards

Proposed § 1293.25 would establish program standards for various elements of the Equitable Housing Finance Plan process. These requirements are intended to provide a foundational logic model and theory of change for a particular plan.⁸²

Proposed § 1293.25(a) would establish requirements for selecting one or more underserved communities to be the focus of a plan. It would establish a requirement that an Enterprise’s choice of an underserved community be supported by information and documented in the plan. It would also provide several factors that an Enterprise must consider in selecting an underserved community, but would also allow for the

⁸¹ See FHFA, Enterprise Equitable Housing Finance Plans Request for Input, (Sept. 2021), *available at* <https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Equitable-Housing-Finance-Plans-RFI.pdf>; FHFA Public Listening Session: Enterprise Equitable Housing Finance Plans RFI, (Sept. 28, 2021), *available at* <https://www.fhfa.gov/Videos/Pages/Enterprise-Equitable-Housing-Finance-Plans-RFI.aspx>.

⁸² See, e.g., Leiha Edmonds, Urban Institute, “Center Racial Equity in Measurement and Evaluation: Emerging Lessons and Guidance from Human Service Nonprofits,” (July 2021), *available at* https://www.urban.org/sites/default/files/publication/104487/centering-racial-equity-in-measurement-and-evaluation_0.pdf.

consideration of other factors.

Proposed § 1293.25(b) would establish requirements for objectives. It would require objectives to be logically tied to one or more identified barriers and facilitate establishing meaningful actions and measurable goals. Objectives establish the overall direction and focus for the plan by defining the outcomes the plan seeks to accomplish. Given that the definition of an underserved community can include both a group of people with a shared characteristic or an area, in some cases objectives could seek to provide place-based solutions to address the needs of a specific area or may seek to provide people the opportunity to obtain sustainable housing opportunities more broadly. The U.S. Supreme Court has made clear that both strategies may be appropriate and comply with the Fair Housing Act depending on the circumstances.⁸³ FHFA expects that an Enterprise would choose appropriate strategies in developing its objectives after considering the needs of an underserved community and feedback from public engagement.

Examples of objectives, if developed to meet the requirements of the proposed rule, could include:

- Developing and providing secondary market support for special purpose credit programs that promote sustainable housing opportunities for an underserved community;
- Increasing sustainable housing opportunities for individuals in the mortgage market, such as by expanding the number of qualified borrowers of an

⁸³ See *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2512 (2015).

underserved community, or making changes to underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures to promote fair lending or provide greater access to sustainable housing opportunities;

- Increasing sustainable housing opportunities for renters of an underserved community living in or seeking to live in multifamily properties financed by the Enterprise's loan purchases, such as by prohibiting source of income discrimination (including rental subsidies and vouchers), providing other tenant protections, or requiring reporting of on-time payments;
- Reducing the homeownership gap for an underserved community with a significant homeownership rate disparity;
- Reducing disparities in acceptance rates for an underserved community with a significant disparity in the Enterprise's automated underwriting system;
- Reducing disparities in the share of loans acquired by the Enterprise that serve an underserved community with a significant disparity in the share of loans acquired by the Enterprise compared to the share of loans originated to members of that underserved community in the overall mortgage market;
- Reducing disparities in negative outcomes for an underserved community in servicing, loan modifications, and loss mitigation;
- Reducing disparities in negative outcomes for an underserved community in tenant screening, repayment options, and evictions;
- Increasing the supply of, and equitable access to, high-quality affordable rental housing for an underserved community;

- Reducing underinvestment and undervaluation in formerly redlined areas or areas that are otherwise underserved or undervalued;
- Increasing the supply of, and equitable access to, high-quality affordable and accessible housing for persons with disabilities and that is available in the most integrated setting appropriate to the needs of an individual with a disability;
- Increasing the supply of, and equitable access to, high-quality affordable housing for families with children in areas with access to high-quality educational, transportation, economic, and other important opportunities;
- Increasing sustainable housing opportunities for veterans;
- Promoting or requiring improvements in: fair lending standards and compliance, marketing and outreach to members of an underserved community who are less likely to apply for certain housing opportunities, the estimation of race and ethnicity for mortgage applicants or housing market participants where race and ethnicity data has not been self-reported, and fair lending self-testing by primary lenders or other market participants that do business with the Enterprises;
- Conducting, and making available publicly, research on advancing equity and sustainable housing opportunities for an underserved community;
- Conducting ethnographic or consumer research on how to effectively serve an underserved community and disseminating it to market participants to improve quality of communications and increase community trust;

- Releasing data publicly on how an Enterprise or the market is performing in serving an underserved community, the effects of an Enterprise's policies on an underserved community, and how an Enterprise's actions may improve performance or address such effects; and
- Providing support to HUD program participants in affirmatively furthering fair housing.

The inclusion or exclusion of any particular objective from the illustrative list is not an indication of FHFA's views about whether or not that objective should or should not be undertaken as part of a plan. The list is intended to illustrate the flexibility of the proposed rule.

Proposed § 1293.25(c) would establish requirements for meaningful actions. It would require that meaningful actions be logically tied to one or more measurable goals and one or more objectives for an identified underserved community and that they support sustainable housing opportunities. It would also require that meaningful actions reflect significant additional action above and beyond actions that also serve other Enterprise objectives and goals and reflect more than *de minimis* action. It would also require that meaningful actions reflect a commitment commensurate with an Enterprise's prominence in the housing market, its available resources, its dedication of resources to other important efforts, the needs of underserved communities, market conditions, and safety and soundness. It would also require that meaningful actions comply with the Safety and Soundness Act, the authorizing statutes, and other applicable law. Finally, it would require that meaningful actions not be actions that are required to remediate supervisory findings or required as a result of enforcement actions.

Proposed § 1293.25(d) would establish requirements for measurable goals. It would require measurable goals to be logically tied to one or more meaningful actions in a plan, be specific, be time-bound, be focused on outcomes, and facilitate measuring Enterprise progress, comparing Enterprise performance, and ensuring public accountability.

L. Section 1293.26 Enterprise Board Equitable Housing and Mission Responsibilities

Proposed § 1293.26 would provide equitable housing and other mission-related responsibilities for Enterprise boards. As discussed above, board oversight is an important element of successful corporate governance, and FHFA's Corporate Governance regulation establishes a requirement for directors to direct the operations of regulated entities in conformity with FHFA regulations. The proposal would provide that Enterprise boards appropriately consider the objectives, actions, and goals of the Enterprise's Equitable Housing Finance Plan, while also appropriately considering its affordable housing goals and Duty to Serve plans and targets, and its other mission-related obligations, in the board's oversight of the Enterprise and the Enterprise's business activities. The proposed rule's language on "appropriately considering" the equitable housing and other mission responsibilities is intended to be flexible and tailored to the particular consideration at hand, while reinforcing that the plan should work in concert with the Enterprise's other mission activities and operations as a whole. This proposed section helps clearly articulate the ultimate responsibility of the board for oversight of the Equitable Housing Finance Plan, the Enterprise's affordable housing goals and Duty to Serve plans and targets, and its other mission-related obligations, and

that they should work in concert with the Enterprise’s operations as a whole.⁸⁴

M. Section 1293.31 Required Enterprise Data Collection and Reporting

Proposed § 1293.31 provides for certain required Enterprise data collection and reporting related to fair housing and fair lending. It would require the Enterprises to collect, maintain, and report data on language preference, homeownership education, and housing counseling for applicants and borrowers. The proposed rule would be substantially the same as the policy announced by FHFA in May 2022.⁸⁵ The Enterprises currently collect this data through the automated underwriting systems and loan delivery and have established data standards for collection of the information. The Enterprises have also issued a standard form for collection of the data — the Supplemental Consumer Information Form.

FHFA issued a request for input in 2017 that addressed improving language access in mortgage lending and mortgage servicing.⁸⁶ As part of that request for input as well as through ongoing engagement, stakeholders have noted the value of collecting the information and certain issues related to its collection. Certain applicants or borrowers may not wish to disclose the information; consistent with current practice by the Enterprises, the proposed rule would not require a response from applicants and borrowers and they could be provided with the option to not respond to a question about

⁸⁴ See, e.g., Leiha Edmonds et al., Urban Institute, “Centering Racial Equity in Measurement and evaluation,” (July 2021), *available at* https://www.urban.org/sites/default/files/publication/104487/centering-racial-equity-in-measurement-and-evaluation_0.pdf.

⁸⁵ See <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Mandatory-Use-of-the-Supplemental-Consumer-Information-Form.aspx>.

⁸⁶ See FHFA, “Improving Language Access in Mortgage Lending and Servicing Request for Input,” (May 25, 2017), *available at* https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Language_Access_RFI.pdf.

language preference as part of the information collection to satisfy the proposed rule. Providing the applicant or borrower the option to not respond is consistent with the collection of data on race and ethnicity in the mortgage market.⁸⁷ Certain stakeholders have also raised concerns about collecting the information in compliance with the Equal Credit Opportunity Act and Regulation B. The Consumer Financial Protection Bureau has specified that collection of language preference information does not violate Regulation B.⁸⁸

Information about homeownership education and housing counseling provides valuable insight into these programs. In July 2022, the Mortgage Industry Standards Maintenance Organization formed a new working group related to housing counseling data.⁸⁹ FHFA’s National Survey of Mortgage Originations (NSMO) includes questions related to homeownership education and housing counseling.⁹⁰ Researchers have used the NSMO data to explore homeownership education and housing counseling’s effects on borrowers.⁹¹ Prior research has also explored the effects of homeownership education

⁸⁷ 12 CFR part 1003, appendix B.

⁸⁸ “On May 3, 2022, the Federal Housing Finance Agency announced that lenders will be required to use the Supplemental Consumer Information Form, which asks about consumers’ language preference, as part of the application process for loans that will be sold to the Enterprises. Consistent with the Consumer Financial Protection Bureau’s Nov. 2017 approval, creditors do not violate the ECOA or Regulation B when they collect the language preference of an applicant or borrower.” Consumer Financial Protection Bureau, “Resources to help industry understand, implement, and comply with the fair lending requirements of the Equal Credit Opportunity Act (ECOA) and Regulation B,” *available at* <https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/equal-credit-opportunity-act/>.

⁸⁹ See <https://www.mismo.org/about-MISMO/news/2022/07/25/mismo-issues-call-for-participants-for-new-housing-counseling-workgroup>.

⁹⁰ See FHFA, National Survey of Mortgage Originations Technical Documentation (Dec. 13, 2022), *available at* <https://www.fhfa.gov/DataTools/Downloads/Documents/NSMO-Public-Use-Files/NSMO-Technical-Documentation-20221213.pdf>.

⁹¹ See Robert Argento et al., “First-Time Homebuyer Counseling and the Mortgage Selection Experience in the United States: Evidence from the National Survey of Mortgage Originations,” *CityScape*, Vol. 21,

and housing counseling on borrowers.⁹² Consistent collection of homeownership education and housing counseling data can facilitate research and market changes to further make use of homeownership education and housing counseling to assist borrowers.

FHFA believes that the information collected on language preference, homeownership education, and housing counseling for applicants and borrowers can support efforts to promote sustainable housing opportunities for underserved communities and could underlie elements of future Equitable Housing Finance Plans.

N. Proposed Rule Timing Elements

Considering the timing aspects of the proposed rule together, in the year prior to new plans, FHFA would conduct public engagement on or before June 15 (*e.g.*, FHFA would conduct public engagement on or before June 15, 2024, to inform planning and oversight related to the 2025-2027 plans). An Enterprise would submit the plan to FHFA for review by September 30 in the year prior to the three-year period covered by the plan; the Enterprise would then publish the plan on its website on January 15 of the first year covered by the plan (*e.g.*, a Freddie Mac plan covering 2025-2027 would be submitted to FHFA on September 30, 2024, and published by Freddie Mac on January 15, 2025).

Number 2, (Nov. 2019), *available at* <https://www.huduser.gov/portal/periodicals/cityscape/vol21num2/ch3.pdf>.

⁹² See Wei Li et al., “NeighborWorks America’s Homeownership Education and Counseling: Who Receives It and Is it Effective?” Urban Institute (Sept. 29, 2016), *available at* <https://www.urban.org/research/publication/neighborworks-americas-homeownership-education-and-counseling-who-receives-it-and-it-effective>; Jennifer Turnham “Pre-Purchase Counseling Outcome Study,” (May 2012), *available at* https://www.huduser.gov/publications/pdf/pre_purchase_counseling.pdf; J. Michael Collins et al., “Homeownership Education and Counseling: Do We Know What Works?” *available at* http://massinc.org/wp-content/uploads/2011/06/76378_10554_Research_RIHA_Collins_Report.pdf.

FHFA would conduct public engagement on or before June 15 in the first year of the plan cycle (*e.g.*, FHFA would conduct public engagement on or before June 16, 2025, because it is the first business day after June 15). Updates and reports would be submitted to FHFA by February 15 of the second year of the plan cycle and published by an Enterprise on April 15 (*e.g.*, a 2026 Freddie Mac update to a 2025-2027 plan would be submitted to FHFA on February 16, 2026, because it is the first business day after February 15, and published by Freddie Mac on April 15, 2026). FHFA would conduct public engagement on or before June 15 of the second year of the plan cycle (*e.g.*, FHFA would conduct public engagement on or before June 15, 2026). Updates and reports would be submitted to FHFA by February 15 of the third year of the plan cycle and published by an Enterprise on April 15 (*e.g.*, a 2027 Freddie Mac update to a 2025-2027 plan would be submitted to FHFA on February 16, 2027, because it is the first business day after February 15, and published by Freddie Mac on April 15, 2027). FHFA would conduct public engagement on or before June 15 in the third year of the plan (*e.g.*, FHFA would conduct public engagement on or before June 15, 2027).

Establishing expected dates by rule for submission, public engagement, and publication provides certainty and transparency to the public and the Enterprises, while permitting the Director to change the dates by public order if necessary in exigent circumstances.

V. Considerations of Differences Between the Banks and the Enterprises

Under the proposed rule, both the Enterprises and the Banks would be subject to proposed subpart A (§§ 1293.1 through 1293.3) and subpart B (§§ 1293.11 through 1293.12), including general provisions related to fair housing and fair lending laws,

compliance, examinations, oversight, and enforcement. Additionally, both the Banks and Enterprises would be covered by FHFA's ability to require regular and special reports and the requirement to certify compliance in regular reports. However, FHFA has not currently issued any reporting orders requiring regular or special fair housing and fair lending reports from the Banks. The Equitable Housing Finance Plan and broader equitable housing finance planning requirements described specifically in subpart C (§§ 1293.21 through 1293.26) would apply only to the Enterprises and would codify in regulation and expand on the existing equitable housing framework for the Enterprises that FHFA established. As discussed above, as part of FHFA's comprehensive review of the Banks, commenters have suggested incorporating equitable housing considerations for the Banks and this idea is currently under consideration. FHFA requests public comment on whether FHFA should codify a similar framework to subpart C for the Banks in regulation and what elements of the framework should be included, modified, or excluded if FHFA were to apply such a framework to the Banks through regulation. FHFA also requests comment on other ways to incorporate principles of equitable housing for the Banks that would meet the same objective. Proposed subpart D (§ 1293.31) could include data collection and reporting requirements that would apply to both the Enterprises and the Banks, but currently as proposed the requirements would apply only to the Enterprises.

When promulgating regulations or taking other actions that relate to the Banks, section 1313(f) of the Safety and Soundness Act, as amended by section 1201 of HERA, requires the Director to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing

liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability.⁹³ In preparing the proposed rule, the Director has considered the differences between the Banks and the Enterprises as they relate to the above factors and has determined that none of the statutory factors would be adversely affected by the proposed rule. The Director is requesting comments from the public about whether differences related to these factors should result in a revision of the proposed rule as it relates to the Banks.

VI. Comments Specifically Requested

As stated above, FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. In addition to comments specifically requested within the description of the proposed rule above, FHFA also requests comment on the questions set forth below. The most helpful comments reference the specific questions listed, explain the reason for any changes, and include supporting data.

General

1. The rule currently does not define equity. FHFA seeks comments on whether the rule should define equity. If the rule should define equity, what would be an appropriate definition?

Compliance and enforcement

2. How can FHFA improve fair lending compliance oversight of the regulated entities?

⁹³ 12 U.S.C. 4513(f).

3. Are there other applicable consumer compliance and/or consumer protection statutes and regulations that FHFA should include in this section?
4. Are there any benefits or other issues FHFA should be aware of in considering adding unfair or deceptive acts or practices to its compliance and enforcement for regulated entities?
5. How should FHFA approach assessing compliance with non-fair lending consumer protection authorities such as unfair or deceptive acts or practices? Would additional guidance be helpful to regulated entities as they assess their overall compliance management?
6. Are there alternatives FHFA should consider to the language and approach for fair lending compliance certifications?

Equitable housing finance plans and updates

7. Is the three-year timeline for the plans adopted by the Enterprises appropriate?
8. Should FHFA issue an evaluation of the Enterprises? Should the rule include required evaluation metrics for the progress reports?
9. Should the rule include required or optional priority goals? If so, who should determine which priority goals are applicable?
10. From year to year, what should be the scope of updates to the Equitable Housing Finance Plans?
11. Should the focus of an Equitable Housing Finance Plan be limited to one underserved community at a time?
12. Does the rule provide for sufficient public engagement?

13. Developing or supporting special purpose credit programs is one type of meaningful action that an Enterprise could take under an Equitable Housing Finance Plan, but the rule would not establish any special purpose credit programs under 12 CFR 1002.8(a)(1) in the regulation itself. Should FHFA adopt any special purpose credit programs under 12 CFR 1002.8(a)(1) and, if so, what type of program(s) should be adopted?
14. Are the minimum requirements for performance reports sufficient or should performance reports contain any additional information not included in the rule?

Federal Home Loan Banks

15. Should the Banks be required to comply with a framework similar to that of the Equitable Housing Finance Plans by regulation?
16. What elements of the framework should be included, modified, or excluded if FHFA were to apply such a framework to the Banks by regulation?
17. Are there other ways to incorporate principles of equitable housing for the Banks that would meet the same objective?

VII. Paperwork Reduction Act

The proposed rule would not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation

that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the Agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. FHFA has considered the impact of this proposed rule under the Regulatory Flexibility Act. FHFA certifies that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities because the regulation would apply only to the regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects for 12 CFR Part 1293

Government-sponsored enterprises, Fair housing, Federal home loan banks, Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, for the reasons stated in the Preamble, under the authority of 12 U.S.C. 4511, 4513, 4526, FHFA proposes to add part 1293 to Chapter XII in title 12 of the Code of Federal Regulations, to read as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1293—FAIR LENDING OVERSIGHT AND EQUITABLE HOUSING

FINANCE

Subpart A—General

§ 1293.1 General.

§ 1293.2 Definitions.

§ 1293.3 Compliance and enforcement.
§ 1293.4 Preservation of authority.
§§ 1293.5-1293.10 [Reserved]

Subpart B—Fair Housing and Fair Lending Compliance

§ 1293.11 Regulated entity compliance.
§ 1293.12 Reports, data, and certifications.
§§ 1293.13-1293.20 [Reserved]

Subpart C—Enterprise Equitable Housing Finance Planning

§ 1293.21 General; Identification of subpart as prudential standard.
§ 1293.22 Equitable housing finance plans and updates.
§ 1293.23 Performance reports.
§ 1293.24 Public engagement.
§ 1293.25 Program requirements.
§ 1293.26 Enterprise board equitable housing and mission responsibilities.
§§ 1293.27-1293.30 [Reserved]

Subpart D—Data Collection

§ 1293.31 Required Enterprise data collection and reporting.

Authority: 12 U.S.C 1456(c)(1); 12 U.S.C. 1723a(m)(1); 12 U.S.C. 4511; 12 U.S.C. 4513; 12 U.S.C. 4513b; 12 U.S.C. 4514; 12 U.S.C. 4517; 12 U.S.C. 4526; 42 U.S.C. 3608(d).

Subpart A—General

§ 1293.1 General.

(a) This part sets forth requirements related to fair lending oversight of regulated entities, equitable housing finance planning by the Enterprises, and certain data collection and reporting by the regulated entities.

(b) Nothing in this part permits or requires a regulated entity to engage in any activity that would otherwise be inconsistent with the Safety and Soundness Act, the authorizing statutes, or other applicable law.

(c) Nothing in this part creates a private right of action.

§ 1293.2 Definitions.

For purposes of this part:

Annual plan update (update) means a public update to an Equitable Housing Finance Plan for the second or third year of a planning cycle.

Barrier means an element of an Enterprise's actions, products, or policies, or an aspect of the housing market that can reasonably be influenced by the Enterprise's actions, products, or policies, that contributes to an underserved community's limited share of sustainable housing opportunities, difficulties in accessing those sustainable housing opportunities, or the continuing adverse effects of discrimination affecting their participation in the housing market.

Equitable Housing Finance Plan (plan) means a three-year public plan developed with public engagement and adopted by each Enterprise describing how each Enterprise will overcome barriers to sustainable housing opportunities faced by one or more underserved communities through objectives, meaningful actions, and measurable goals.

Fair housing and fair lending laws means the Fair Housing Act, the Equal Credit Opportunity Act, and implementing regulations. Additionally, with respect to an Enterprise, it means 12 U.S.C. 4545 and implementing regulations.

Performance report (report) means an annual public report by an Enterprise on its performance under its Equitable Housing Finance Plan and other information on equitable housing and fair lending that meets the requirements of § 1293.23 and any other FHFA requirements.

Sustainable housing opportunity means a rental or homeownership opportunity

that includes one or more characteristics important to the needs of a tenant or homeowner. These include but are not limited to: being affordable to obtain and sustain; relating to a dwelling that meets basic habitability requirements and is reasonably able to withstand natural disasters or other climate-related impact events; relating to a dwelling that is improving the quality of housing stock in an area; being located in an area with access to educational, transportation, economic, and other important opportunities, including community assets; being accessible for persons with disabilities and available in the most integrated setting appropriate to the needs of an individual with a disability; not placing the tenant or homeowner in a position where they are unlikely to succeed in sustaining the housing opportunity over the long term; and providing reasonable opportunities to accommodate hardships by the renter or homeowner to allow continuation of the housing opportunity.

Underserved community is a group of people with shared characteristics or an area that is subject to current discrimination or has been subjected to past discrimination that has or has had continuing adverse effects on the group or area's participation in the housing market, historically has received or currently receives a lower share of the benefits of Enterprise programs and activities providing sustainable housing opportunities, or that otherwise has had difficulty accessing these benefits compared with groups of people without the shared characteristic or other areas. Shared characteristics include but are not limited to characteristics protected by fair lending laws applicable to the Enterprises including race, color, religion, sex (including actual or perceived sexual orientation or gender identity), familial status, national origin, disability, marital status, age, receipt of public assistance income, exercise of rights protected by the Consumer

Credit Protection Act, exercise of rights protected by the Fair Housing Act, dwelling age, dwelling location, and neighborhood age. Examples of underserved communities, if supported by adequate information in a plan pursuant to § 1239.25 of this chapter, include: the Commonwealth of Puerto Rico, single parents, persons with disabilities, women of color, seniors with fixed income, self-employed individuals, individuals with limited mainstream credit and banking history, counties which have historically received a lower share of the benefits of Enterprise programs and activities, individuals with income variance such as skilled tradespeople or those that receive income through commission, persons with limited English proficiency, and multigenerational households.

§ 1293.3 Compliance and enforcement.

FHFA may enforce compliance with this part in any manner and through any means within its authority, including but not limited to adverse examination findings or through supervision or enforcement under 12 U.S.C. 4511(b), 4513b, 4631, or 4636. The agency may conduct examinations of a regulated entity's activities related to this part pursuant to 12 U.S.C. 4517.

§ 1293.4 Preservation of authority.

Nothing in this part in any way limits the authority of the Federal Housing Finance Agency under other provisions of applicable law and regulations.

§§ 1293.5-1293.10 [Reserved]

Subpart B—Fair Housing and Fair Lending Compliance

§ 1293.11 Regulated entity compliance.

(a) *Compliance with fair housing and fair lending laws.* Regulated entities must comply with fair housing and fair lending laws.

(b) *Compliance with prohibition on unfair or deceptive acts or practices.*

Regulated entities must comply with the prohibition on unfair or deceptive acts or practices under 15 U.S.C. 45.

(c) *Responsibilities of boards of directors.* In accordance with § 1239.4(b)(4) of this chapter, directors of a regulated entity shall direct the operations of the regulated entity in conformity with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices under 15 U.S.C. 45, including by appropriately considering compliance with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices under 15 U.S.C. 45 in the oversight of the regulated entity and its business activities.

§ 1293.12 Reports, data, and certifications.

(a) *Reports.* FHFA may require the regulated entities to submit to FHFA regular and special reports concerning fair housing and fair lending, including the provision of data pursuant to FHFA instructions.

(b) *Certifications.* Each regular report concerning fair housing and fair lending shall include a certification of the regulated entity's compliance with fair housing and fair lending laws and with § 1293.11(b) in addition to any other required certification or declaration (such as a declaration under 12 U.S.C. 4514(a)(4)).

§§ 1293.13-1293.20 [Reserved]

Subpart C—Enterprise Equitable Housing Finance Planning

§ 1293.21 General; Identification of subpart as a prudential standard.

(a) This subpart sets forth the Enterprise duty to engage in equitable housing finance planning and to take meaningful actions to support underserved communities, and

establishes standards and procedures related to public engagement and FHFA's oversight of the Enterprises' planning and actions.

(b) If a date provided in this subpart falls on a day that is not a business day, the date required shall be the next business day.

(c) Submission and publication dates provided in this subpart may be changed by the Director, as determined appropriate, by public order for a particular required submission or publication.

(d) This subpart, except for § 1293.26, is a prudential standard pursuant to section 1313B of the Safety and Soundness Act, 12 U.S.C. 4513b, and is subject to 12 CFR part 1236.

§ 1293.22 Equitable housing finance plans and updates.

(a) *General.* Every three years each Enterprise shall adopt an Equitable Housing Finance Plan covering a three-year period. Each Enterprise may adopt a public annual plan update to that plan for the second and third years of the plan.

(b) *Contents of plan.* The plan shall include:

(1) Identification of barriers to sustainable housing opportunities faced by one or more underserved communities;

(2) Objectives that establish the overall direction and focus for the plan by defining the outcomes the plan seeks to accomplish, and that are logically tied to one or more identified barriers;

(3) Meaningful actions (actions) describing the high-impact activities the Enterprise intends to undertake to further the identified objectives that span one or more years (including extending beyond the period covered by the plan);

- (4) Specific, measurable, and time-bound goals (goals) for each action; and
- (5) Summaries of the Enterprise’s public engagement in developing the plan.

(c) *Plan submission.* Each Enterprise shall submit its Plan to FHFA for review on or before September 30 of the year prior to the first year covered by the Plan.

(d) *Contents of annual plan update.* If an Enterprise chooses to submit an update, it shall include all changes the Enterprise is making to its plan, including any changes in identified barriers, objectives, meaningful actions, specific, measurable, and time-bound goals, and a summary of any additional public engagement. The update shall clearly describe the specific reason(s) for each significant change to the plan.

(e) *Annual update submission.* If an Enterprise chooses to submit an update, it shall submit its update for FHFA review on or before February 15 of the year covered by the update.

(f) *FHFA review.* FHFA shall review each plan and update and, prior to publication, may:

- (1) Require removal of any confidential or proprietary information;
- (2) Require removal of any content that is not consistent with this part, the Safety and Soundness Act, the authorizing statutes, or other applicable law; and

(3) Provide any feedback for consideration.

(g) *No prior approval of activities.* FHFA’s review does not constitute a prior approval of a plan or update or any action described therein. All actions included in a plan are subject to all applicable FHFA and other requirements and authorities.

(h) *Disclaimer included in plan and annual update.* The plan and the annual update must include disclaimer language indicating the implementation of actions may be subject to change based on certain factors.

(i) *Plan and update publication.* Each Enterprise shall publish its plan on its website on January 15 of the first year covered by the plan and maintain it thereafter. Each Enterprise shall publish any update on its website on April 15 of the second and third year covered by the plan and maintain it thereafter. Each Enterprise shall ensure that plans and updates are accessible to persons with disabilities.

(j) *Additional guidance.* From time to time, FHFA may issue public guidance on plans and updates.

§ 1293.23 Performance reports.

(a) *General.* Annually, each Enterprise shall publicly report on its plan progress and provide other information related to equitable housing and fair housing and fair lending for the prior year in a performance report.

(b) *Contents of the report.* The report shall contain, at a minimum:

(1) A narrative assessment consisting of a review of major successes and key accomplishments as well as lessons learned and challenges experienced;

(2) Plan performance details for each objective, measurable goal, and meaningful action, including outcome-based metrics;

(3) A summary of outcomes for the year categorized by type of activity and by race and ethnicity group and underserved community group (if available);

(4) A summary of the value of resources dedicated by the Enterprise in supporting the outcomes categorized by type of activity and a summary of additional

value of resources contributed from third parties as a result of the Enterprise's support of the outcomes.

(5) An assessment of the Enterprise's underwriting that includes:

(i) For the applicable year and the preceding three years, the accept rates for the Enterprise's automated underwriting system categorized by home purchase, rate-term refinancing, and cash-out refinancing and by race and ethnicity group and underserved community group (if available);

(ii) For the applicable year and the preceding three years, the Enterprise's loan acquisitions categorized by home purchase, rate-term refinancing, and cash-out refinancing and by race and ethnicity group and underserved community group (if available); and

(iii) A narrative assessment of any innovations in automated underwriting or other policy taken during the applicable year and any future planned work intended to address identified disparities.

(c) *Report submission.* Each Enterprise shall submit its report to FHFA for review on or before February 15 annually.

(d) *FHFA review.* FHFA shall review each report and, prior to publication, may:

(1) Require removal of any confidential or proprietary information;

(2) Require removal of any content that is not consistent with this part, the Safety and Soundness Act, the authorizing statutes, or other applicable law; and

(3) Provide any feedback for consideration.

(e) *Report publication.* Each Enterprise shall publish its report on its website on April 15 annually and maintain it thereafter. Each Enterprise shall ensure that reports are accessible to persons with disabilities.

(f) *Additional requirements and guidance.* FHFA may require additional information to be included in reports through other FHFA authorities, such as 12 U.S.C. 4514. From time to time, FHFA may issue public guidance on reports.

§ 1293.24 Public engagement.

(a) *FHFA public engagement.* On or before June 15 annually, FHFA will conduct public engagement to allow the public to provide input for the Enterprises to consider in developing and implementing their plans and for FHFA to consider in its oversight.

(b) *Enterprise consultation.* The Enterprises shall consult with stakeholders, including members of underserved communities and housing market participants, in the development and implementation of their plans and updates.

§ 1293.25 Program requirements.

(a) *Requirements for underserved communities.* An Enterprise shall ensure that a plan relies on adequate information in identifying the underserved community or communities addressed by that plan and shall document that information as part of the plan. In selecting one or more underserved communities to be the focus of a plan, an Enterprise shall consider, among other factors:

- (1) Input from public engagement;
- (2) Whether the underserved community has previously been the focus of a plan;

(3) The extent of the needs identified for the underserved community, including such needs that may remain despite prior efforts under a plan; and

(4) Whether the underserved community is covered by a different initiative or program of the Enterprise.

(b) *Requirements for objectives.* Objectives identified in a plan shall be logically tied to one or more identified barriers and facilitate establishing meaningful actions and measurable goals.

(c) *Requirements for meaningful actions—(1) Relation to objectives and goals.* Meaningful actions shall be logically tied to one or more measurable goals and one or more objectives and support sustainable housing opportunities for an identified underserved community.

(2) *Other Enterprise goals and incremental action.* Meaningful actions may also serve other Enterprise objectives and goals; however, a plan shall reflect significant additional action above and beyond actions that are also serving other Enterprise objectives and goals and shall reflect more than *de minimis* action.

(3) *Significant dedication of resources.* Meaningful actions shall reflect a commitment commensurate with an Enterprise's prominence in the housing market, its available resources, its dedication of resources to other important efforts, the needs of underserved communities, market conditions, and safety and soundness.

(4) *Compliance with law.* Actions that are not compliant with the Safety and Soundness Act, the authorizing statutes, or other applicable law do not qualify as meaningful actions.

(5) *Required remedial actions.* Actions that are required to remediate

supervisory findings or required as a result of enforcement actions do not qualify as meaningful actions.

(d) *Requirements for measurable goals.* Measurable goals shall be:

(1) Logically tied to one or more meaningful actions identified in a plan;

(2) Specific;

(3) Time-bound;

(4) Focused on outcomes; and

(5) Facilitative of measuring Enterprise progress, comparing Enterprise performance, and ensuring public accountability.

§ 1293.26 Enterprise board equitable housing and mission responsibilities.

An Enterprise's board of directors shall appropriately consider the objectives, actions, and goals of the Enterprise's Equitable Housing Finance Plan, while also appropriately considering its affordable housing goals, Duty to Serve plans and targets, and other mission-related obligations, in the board's oversight of the Enterprise and the Enterprise's business activities.

Subpart D—Data Collection

§ 1293.31 Required Enterprise data collection and reporting.

Each Enterprise shall collect, maintain, and provide to FHFA the following data relating to single-family mortgages:

(a) The language preference of applicants and borrowers; and

(b) Whether applicants and borrowers have completed homeownership education or housing counseling and information about the homeownership education or housing counseling.

_____/s/_____
Sandra L. Thompson
Director, Federal Housing Finance Agency

April 19, 2023