



June 26, 2023

Mr. Clinton Jones
General Counsel
Federal Housing Finance Agency
Attention: Comments/RIN 2590-AB29
400 Seventh Street, SW
Washington, D.C. 20219

Re: Comments on Notice of Proposed Rulemaking on Fair Lending, Fair Housing, and Equitable Housing Finance Plans

Dear Mr. Jones:

On behalf of the Federal Home Loan Banks (“FHLBanks”), this comment letter is submitted by the Council of FHLBanks (“Council”), a trade association that represents the views and positions of the 11 Federal Home Loan Banks (each an “FHLBank” and collectively, the “FHLBanks” or “System”). The Council appreciates this opportunity to comment on the Federal Housing Finance Agency’s (the “FHFA”) Notice of Proposed Rulemaking on Fair Lending, Fair Housing, and Equitable Housing Finance Plans (“Notice”). The discussion below covers key observations on the Notice, in an effort to raise certain concerns and respectfully request clarifications, as well as responses to certain comments specifically requested. The FHLBanks are committed to continuing to model the principles and values at the heart of the Notice and, therefore, look forward to continuing their active engagement with the FHFA on these matters.

I. FHLBanks Currently Comply with a Framework Substantially Similar to that of the Equitable Housing Finance Plans by Regulation and Demonstrate Equitable Housing Finance Plan Principles through their Affordable Housing and Community Lending Programs and Compliance with Applicable Regulations

The discussion on Equitable Housing Finance Plans below responds to specific comment request numbers 15 through 17, which the System believes are interrelated and are addressed collectively below.

Specific Requests for Comment regarding the FHLBanks:

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?

The FHLBanks should not be required to comply with the requirements of the Equitable Housing Finance Plans (“EHFP”) since they already fulfill statutory and regulatory requirements designed to address housing needs through the Affordable Housing Programs (“AHPs”) and Community Investment Programs (“CIPs”). Therefore, developing an EHFP framework would be redundant because the FHLBanks currently meet and carry out the objectives of the EHFP requirements applicable to the Enterprises and as set forth in the Notice.

The Federal Home Loan Bank Act (“Act”) requires each FHLBank to establish an AHP and CIP, pursuant to which it must offer subsidized advances to members to finance affordable housing for low- and very low-income families¹ and provide funding to members to undertake community-oriented mortgage lending to benefit very low-, low- and moderate-income families and communities.² It was Congress’s intent that the FHLBanks contribute to affordable housing and community development by providing credit and financing opportunities through their members.

In order for the FHLBanks to achieve their statutory obligations, the FHFA (and its predecessor, the Federal Housing Finance Board) has published implementing regulations covering Community Support Requirements, FHLBanks’ AHP, and Community Investment Cash Advances.³ The work of each FHLBank in these areas is documented in its respective Targeted Community Lending Plan (“TCLP”), which, as described in more detail below, is the framework that holds the FHLBank accountable for identifying needs within its district, describes how it will meet those needs, and sets quantitative targeted community lending performance goals.⁴

As part of the FHFA’s oversight authority, all the FHLBanks’ AHPs, CIPs, and additional district-specific programs are subject to robust FHFA oversight by way of publishing and enforcing regulations and supplementary guidance, combined with administering regular supervisory examinations that cover the breadth of their work in this area. Through the FHLBanks’ affordable housing and community development programs and the FHFA’s supervision and oversight to ensure safety and soundness, the FHLBanks are able to accomplish their statutory public missions.

¹ 12 USC § 1430(j). Further, the FHFA’s AHP regulation allows the FHLBanks to provide direct subsidies through their respective AHPs. See 12 CFR Part 1291.

² 12 USC § 1430(i).

³ 12 CFR Parts 1290, 1291, and 1292, respectively.

⁴ Each FHLBank’s TCLP is available at the following hyperlink:

<https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Pages/FHLBank-Community-Lending-Plans.aspx>

The Notice describes the FHFA’s plan to codify its previously articulated requirement that the Enterprises prepare and implement EHFPs that describe their efforts in equitable housing finance planning. The Notice sets forth the FHFA’s proposed criteria as to (i) content, (ii) public engagement, and (iii) publication of the Enterprises’ EHFPs. Notably, these criteria are substantially similar to those set forth for the FHLBanks to develop and implement TCLPs under the FHFA’s Community Support Requirements regulation (“Community Support Regulation”),⁵ and also invoke noticeable parity with the regulations implementing the statutorily required AHPs.⁶

a. Plan Contents

The Notice requires the Enterprises to identify “barriers to sustainable housing opportunities faced by one or more underserved communities” and state the objectives its EHFP seeks to accomplish as “tied to one or more identified barriers.”⁷ The TCLP has an analogous requirement for the FHLBanks to “identify and assess the significant affordable housing needs in its districts” that will be addressed through the FHLBank’s affordable housing programs.⁸ The TCLPs must also include how the FHLBank will “address identified credit needs” through targeted community lending.⁹ Further, the FHLBanks are required by the Community Support Regulation to “identify opportunities for members to expand financial and credit services in underserved neighborhoods and communities”¹⁰ and provide notice to their members of FHLBank programs which enable members to engage in community lending.¹¹

The proposed rule requires the Enterprises to select one or more underserved communities that will be a focus of their EHFP. According to the Notice, this focus will help the Enterprises address the disparities and challenges that limit access to sustainable housing opportunities for these communities.

Pursuant to the AHP regulations, the FHLBanks must include specifically identified “underserved communities and populations” as a scoring category through their respective AHP General Funds.¹² The AHP regulations further provide the FHLBanks flexibility in addressing the affordable housing needs in their communities by permitting the FHLBanks to establish district-specific scoring priorities for their general application programs. Similar to the proposed EHFP requirements, the AHP regulations require the FHLBanks to concentrate resources on specific “underserved communities and populations” in order to effectively address their needs.

Additionally, the Notice requires the EHFPs to include “specific, measurable, and time bound goals” for each action it intends to take to further an identified objective.¹³

⁵ 12 CFR § 1290.6(a)(5).

⁶ 12 CFR Part 1291.

⁷ 88 Fed. Reg. 25293, 25308 (April 26, 2023).

⁸ 83 Fed. Reg. 61186, 61196 (November 28, 2018).

⁹ Id.

¹⁰ 12 CFR § 1290.6(a)(3).

¹¹ 12 CFR § 1290.6(b)(1).

¹² 12 CFR § 1291.26(e).

¹³ 88 Fed. Reg. 25293, 25308 (April 26, 2023).

TCLPs require analogous requirements to “establish quantitative targeted community lending performance goals.”¹⁴

Existing TCLP requirements for the FHLBanks, just like EHFP requirements for the Enterprises, require the FHLBanks to utilize market research and stakeholder input to identify their district’s housing and credit needs, define actions that will address those needs, and establish measurable goals.

b. Public Engagement

Under the Notice, the EHFPs as proposed would have two required and interrelated elements of public engagement. First, the “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 the FHFA to consider in its oversight.”¹⁵ Additionally, “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.”¹⁶ Accordingly, as proposed, the Enterprises are to conduct their own public outreach and will also be informed by the FHFA’s views as influenced by their separate outreach efforts.

Relatedly, under the TCLP requirements, an FHLBank must develop its TCLP “in consultation with (and may only be amended after consultation with) its Advisory Council¹⁷ and with [FHLBank] members, housing associates, and public and private economic development organizations in the Bank’s district.”¹⁸ The consultation requirements with a wide range of entities who have close insight into public needs “ensure[s] a robust process for obtaining input on the TCLPs.”¹⁹ These stakeholders must also be consulted before amending a TCLP under the governing regulation.²⁰ Analogous to the public input process required for the EHFPs, the requirements specific to TCLPs ensure that any FHLBank’s community lending plans are meaningfully shaped by a thorough stakeholder input process.

c. Public Access

¹⁴ 12 CFR § 1290.6(a)(5)(iv).

¹⁵ 88 Fed. Reg. 25293, 25303 (April 26, 2023).

¹⁶ *Id.*

¹⁷ FHLBank Advisory Councils are comprised of individuals “who reside in the Bank’s district and are drawn from community and not-for-profit organizations that are actively involved in providing or promoting low and moderate-income housing, and community and not-for-profit organizations that are actively involved in providing or promoting community lending, in the district.” 12 CFR § 1291.14(a)(1). This regulation implements the corresponding statutory requirement located at 12 USC § 1430(11). The Act and implementing regulations also require that the Advisory Council meet with representatives of its respective FHLBank’s board of directors at least quarterly to advise on the FHLBank’s low- and moderate-income housing and community lending programs and needs in the FHLBank’s district.

¹⁸ 12 CFR § 1290.6 (a)(5)(iii).

¹⁹ 83 Fed. Reg. 61186, 61197 (November 28, 2018).

²⁰ 12 CFR § 1290.6 (a)(5)(iii).

The proposed rule requires the Enterprises to submit their EHFPs to the FHFA on or before September 30th of the year prior to the first year covered.²¹ The Enterprises shall then publish their respective plans on their websites by January 15th of the first year covered by the plan as well as publicly post any updates by April 15th on the second and third years covered by the plan.²² With respect to the TCLPs, public access is similarly required. FHLBanks are required to publish their annual TCLPs on their public websites on or before January 31, as well as any amendments, within 30 days after adoption by the FHLBank's board of directors.²³

Each year, the Enterprises are to publicly report on their progress related to their EHFP.²⁴ Similarly, each year, every FHLBank's respective Advisory Council submits a report to the FHFA of "an analysis of the [FHL]Bank's targeted community lending and affordable housing activities."²⁵ After 30 days of submitting the report to the FHFA, the FHLBank is required to publish the Advisory Council's report on its public website.²⁶ Requiring the Advisory Councils to report on the FHLBanks' activities provides an independent assessment of the progress each FHLBank has made with its affordable housing and community lending efforts generally. Annually, the FHFA publishes its Low-Income Housing and Community Development Activities of the Federal Home Loan Banks and submits a report to Congress on the FHLBanks' support of low-income housing and community development efforts keeping the Banks accountable to their statutory mandate.²⁷ The existing requirements for the FHLBanks to publicly disclose their plans and their progress with those plans ensures transparency and drives public accountability.

d. Applying the EHFP Requirements to the FHLBanks Would be Redundant of Existing Requirements

For the reasons stated above, the EHFP requirements under the Notice are substantially similar to the existing statutory and regulatory requirements, and as such, the FHLBanks currently comply with a framework aimed at advancing access to affordable housing similar to that of the EHFPs. Therefore, any regulatory rulemaking that would expand the EHFP requirements to the FHLBanks would be redundant and unnecessary.

The System appreciates the FHFA's recognition and consideration of the differences between the FHLBanks and the Enterprises. The aforementioned regulations are unique, as they have been specifically written for the FHLBanks with ample consideration for the specific geographic boundaries, structure, resources, governance, and statutory mission of the FHLBanks. The Act and implementing

²¹ 88 Fed. Reg. 25293, 25308 (April 26, 2023).

²² Id.

²³ 12 CFR § 1290.6(c). The FHLBanks' board of directors must approve the TCLP, demonstrating a strong commitment to achieving the stated goals and actions. 12 CFR § 1290.6(a)(5).

²⁴ 88 Fed. Reg. 25293, 25308 (April 26, 2023).

²⁵ 12 CFR § 1290.7.

²⁶ 12 CFR § 1291.14(d)(3).

²⁷ 12 USC § 1430(j)(12).

regulations allow the FHLBanks to develop and offer programs and services designed to meet the individual needs of each district. The FHLBanks have been successful in establishing and implementing their affordable housing and community lending programs, and over time have designed and matured operational processes, built relationships, and devoted tools and technology enabling them to support affordable housing and community development outcomes in their districts as well as comply with regulatory requirements. The System requests that any decision to require the FHLBanks to comply with any requirement of the EHFPs be accompanied by a publicized Notice of Proposed Rulemaking so that stakeholders may review and have an opportunity to comment on the related impacts on the FHLBanks and the communities they serve.

II. Prospective Data Reporting Requirements and their Purpose Must be Considered in Connection with Already Existing Data Reporting Requirements for Efficiency and Effectiveness; Compliance Certification Language and Approach as Proposed Should be Revised to Meet Industry and other FHFA Certification Standards

a. Data Reporting

Under § 1293.12 of the proposed rule, the FHFA may require the FHLBanks and the other regulated entities to provide to the FHFA regular and special reports, including the provision of data, concerning fair lending and fair housing.²⁸ Unlike for the Enterprises, to date, the FHFA has not issued to the FHLBanks any reporting orders requiring reporting related to fair housing and fair lending. Moreover, through the Notice, the FHFA does not outline proposed data or other requirements for specific reports of the FHLBanks, but instead indicates that, “FHFA would plan to issue such reporting orders at an appropriate time, if deemed necessary.”²⁹

In the absence of further clarification or guidance, however, the FHLBanks are concerned that the proposed rule’s lack of specificity and yet unidentified requirements regarding the extent and nature of potential future data collection and reporting obligations for the FHLBanks may give rise to inadvertent complexities or burdensome additional collection, tracking, and reporting duties. For example, the FHLBanks may need to modify agreements and other documentation, develop and implement changes to systems and policies, and create and train staff on new processes and procedures, in addition to potentially needing to manage new responsibilities of inquiry and reporting on timing that may compete with existing filing or reporting deadlines for Securities and Exchange Commission reporting, minority and women inclusion (“MWI”) and diversity annual reports, and other current tracking, monitoring, and reporting obligations.

²⁸ 88 Fed. Reg. 25293, 25308 (April 26, 2023).

²⁹ 88 Fed. Reg. 25293, 25301 (April 26, 2023).

b. Consider how Existing Data Reporting Requirements May Satisfy Functional and Substantive Objectives Before Imposing Additional Reporting Frameworks

FHLBanks already are subject to robust data collection obligations, including for example programs established pursuant to the FHFA's Acquired Mortgage Assets regulation³⁰ and the AHP, in addition to the loan-level data collection obligations of their member institutions. Prior to deciding whether additional data collection or reporting is required, the FHLBanks respectfully request the FHFA consider the proposed functional objectives and substantive outcomes for any potential future reporting orders in light of the FHLBanks' existing data collection and reporting frameworks and requirements without imposing additional reporting obligations on the FHLBanks.

Any additional data reporting requirements should be subject to a regulatory notice and comment process providing the FHLBanks and other stakeholders with the opportunity to provide important feedback to the FHFA prior to issuance of a final rule regarding any reporting requirements or reporting orders, including the data being requested and the structure and timelines for implementation. The opportunity to comment on any future fair lending and fair housing data collection and reporting requirements is especially important and an essential element in the regulatory process considering the Notice's statement that FHFA could issue an adverse examination finding, factor non-compliance into supervisory rating, or enter into a written agreement with a regulated entity if it finds that the regulated entity has not complied with the required data collection or reporting.

c. Certifications of Compliance

The proposed rule's § 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 USC § 4514(a)(4)).³¹ The Notice states that, "[u]nder 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" and that § 1293.12 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 practices for reports related to fair housing and fair lending.³²

In the FHFA's view, "[t]his 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."³³ The Notice states that

³⁰ 12 CFR Part 1268.

³¹ 88 Fed. Reg. 25293, 25301 (April 26, 2023).

³² Id.

³³ Id.

certifications of compliance are in common use by other Federal agencies, including with respect to Federal housing grants and consent decrees and settlement agreements by the Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) in housing and lending discrimination cases. In addition, the FHFA proposes allowing “flexibility for FHFA to make changes to the specific certification language when necessary” but also seeks comment on the following certification language under the Notice: “[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.”³⁴

In the absence of specified reporting requirements that outline the scope of reporting obligations and extent of required assurances thereunder, the FHLBanks find it difficult to agree that an overarching, non-specific certification of compliance affixed to each regular report would create appropriate incentives when balanced with potential risks and liabilities of overly broad representations that may exceed typical regulatory compliance assurances in reporting. The FHFA’s existing standard under the Responsibilities of Boards of Directors, Corporate Practices, and Corporate Governance regulation³⁵ for a regulated entity’s compliance program is to establish and maintain a program that is “reasonably designed to assure that the regulated entity complies with applicable laws, rules, regulations, and internal controls.”³⁶ To extend this standard of reasonable assurance to a broader guarantee of compliance with all fair housing and fair lending laws and prohibitions on unfair or deceptive acts or practices generally with each regular report, regardless of context or scope of the relevant report, creates potentially undue legal and compliance risk and burdens that are inconsistent with compliance standards designed by other Federal agencies that oversee fair housing and fair lending and with the compliance standards of the FHFA itself. For example, in the certification that accompanies a regulated entity’s required annual reporting regarding MWI requirements, the regulated entity’s officer responsible for the annual report certifies that the data and information presented in the report are accurate and are approved for submission,³⁷ not that there is general compliance in all material respects with 12 CFR Part 1223.

Moreover, the System has not identified examples of analogous blanket certifications of such broad legal compliance among other Federal banking regulators, such as the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve Banks, or the Consumer Financial Protection Bureau (“CFPB”). For example, under Regulation C’s Home Mortgage Disclosure Act (“HMDA”) required reporting of a financial institution’s annual loan/application register includes certification by “[a]n authorized representative of the financial institution with knowledge of the data submitted” as to the “accuracy and completeness of data submitted”,³⁸ as opposed to a general statement of legal compliance with fair housing

³⁴ 88 Fed. Reg. 25293, 25302 (April 26, 2023).

³⁵ 12 CFR Part 1239.

³⁶ 12 CFR § 1239.12.

³⁷ 12 CFR § 1223.23(a).

³⁸ 12 CFR § 1003.5(a)(1)(i).

and fair lending laws, even though the HMDA disclosures presumably support the intent and purpose of such laws.³⁹

Although the FHFA has expressed the desire for flexibility to make changes to the certification language, that may hinder the ability of the regulated entities to obtain a full and fair opportunity to comment on potential changes to any certification language. Because the certification language could be used to impose or suggest subsequent liability for the entity making the certification, the precise language should be fully vetted prior to implementation. The additional burden of negotiating alternative language depending on the report or circumstances (such as if the regulated entity is aware of or subject to expressly identified fair lending non-compliance in a supervisory examination that the regulated entity was remediating in a particular period) may hinder timely reporting and unduly complicate compliance processes and procedures. The FHLBanks also would point out that circumstances of established violations or even potential concern over non-compliance (such as the FHFA's cited example of consent decrees and settlement agreements) are very different from general, routine data collection and reporting.

The FHFA observes that certifications related to compliance are commonly used in consent decrees and settlement agreements by the DOJ and HUD in housing and lending discrimination cases. In circumstances in which a fair lending or fair housing settlement agreement has been reached, it may be appropriate to require a broader compliance certification that requires the entity to certify that the practices leading to the violation have been changed. It may also be possible to define more narrowly the areas of law and regulation at issue and the specific compliance violations or remedies that are of concern.

In another example, the CFPB recently proposed a rule with respect to Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders,⁴⁰ in which the CFPB is proposing to require that certain supervised nonbanks annually submit a written statement regarding the company's compliance with any outstanding registered orders, in which statement "the attesting executive would generally describe the steps the executive has undertaken to review and oversee the company's activities subject to the applicable order for the preceding calendar year" and would "provide an attestation regarding the company's compliance with the order."⁴¹ The proposed attestation of compliance is linked to the relevant order and applicable violations of law or non-compliance, even though the CFPB clearly outlines in its proposal its broader role in administering and enforcing Federal consumer financial laws.⁴² The FHLBanks therefore believe that specifically tailored certifications of compliance could be appropriate in defined circumstances (such as identified instances of prior non-

³⁹ Regulation C implements the Home Mortgage Disclosure Act (12 U.S.C. § 2801 *et seq.*), which it notes is "intended to provide the public with loan data that can be used: (i) [t]o help determine whether financial institutions are serving the housing needs of their communities; . . . and (iii) [t]o assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes." 12 CFR § 1003.1(b)(1).

⁴⁰ 88 Fed. Reg. 6088 (January 30, 2023).

⁴¹ 88 Fed. Reg. 6088, 6090 (January 30, 2023).

⁴² 88 Fed. Reg. 6088, 6088-6089 (January 30, 2023).

compliance, settlements, consent decrees, or court orders) but broad-based compliance statements included in routine reporting would not be analogous or appropriate.

d. Blanket Certifications of Compliance not Appropriate

For the reasons stated above, the FHLBanks assess that the Notice's proposed blanket certification of compliance with all fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices appear inappropriate in the context of routine reporting.

The discussion below responds to specific comment request number 6.

6. Are there alternatives FHFA should consider to the language and approach for fair lending compliance certifications?

If the FHFA nonetheless determines to proceed with generally applicable certification language to accompany potential future fair lending reports, then the FHLBanks would propose, in the alternative, that the FHFA consider an approach to certifications that is more consistent with the FHFA's standard of reasonable assurance (i.e., that the FHLBank's compliance program regarding fair housing and fair lending laws and prohibitions on unfair or deceptive acts or practices is "reasonably designed to assure that the regulated entity complies with applicable laws, rules, regulations, and internal controls"⁴³) and that is more in line with reporting and disclosure certifications adopted by other regulators, such as Financial Industry Regulatory Authority's ("FINRA") Rule 3130 (Annual Certification of Compliance and Supervisory Processes). This certification speaks in part to the firm's having in place processes to establish, maintain, review, test, and modify policies and procedures "reasonably designed to achieve compliance" with applicable rules, laws, and regulations.⁴⁴ Any FHFA approach to certification also should include stipulations "to the best of [one's] knowledge and belief" following reasonable or due inquiry of the certifying individual.

III. UDAP Compliance Standard Must be Defined; FHLBank Compliance or Actions Taken in Accordance with FHFA Regulations, Guidance, Examination Findings, and other Directives Presumes Compliance with UDAP

The discussion below responds to specific comment requests numbers 4 and 5.

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

⁴³ 12 CFR § 1239.12.

⁴⁴ FINRA Rule 3130(b)-(c).

practices? Would additional guidance be helpful to regulated entities as they assess their overall compliance management?

Under proposed § 1293.11(b), the FHFA has indicated its intent to supervise the FHLBanks' compliance with the FTC Act's prohibition on unfair or deceptive acts or practices ("UDAP"). The System believes it is imperative that, prior to expanding its supervisory role to examine and enforce UDAP, the FHFA recognizes that there is need for clarification of the UDAP standard as it relates to the nature of the FHLBanks' business structure and transactions, including transactions with its members. Given the current absence of well-defined guidance or criteria available against which the FHLBanks' may manage their compliance on a proactive basis through preventative mechanisms, the FHLBanks are concerned that their compliance with UDAP may be addressed by the FHFA in a punitive manner solely through enforcement actions. Until such time that the FHLBanks are provided with reasonable, practical, and clear guidance on how to manage UDAP compliance with due consideration given to the unique products and services they offer, the FHLBanks would find it very challenging to confidently and accurately manage compliance with UDAP or otherwise broadly certify to a standard that has not yet been defined.

As highlighted earlier in this letter, the FHLBanks have a demonstrated history of supporting the critical housing needs and interests of their districts and have achieved this by acting in accordance with those consumer needs and interests, not contrary to them. The FHLBanks believe they can continue their success in this area and improve upon it through existing regulatory frameworks and supervision to which they are already subject.

Lastly, the FHLBanks would like to express their view that, to the extent the FHFA chooses to examine the FHLBanks for UDAP compliance, clearer guidance must be provided to the System with appropriate time to implement. Additionally, if an FHLBank has taken action in response to specific FHFA guidance or examination findings, such actions cannot be grounds for criticism or a violation of UDAP. For example, actions such as an FHLBank modification of its advances collateral eligibility criteria, collateral valuation model, or membership standards taken to address FHFA safety and soundness examination concerns or standards should not later be subject to challenge as unfair or deceptive under § 1293.11(b).

IV. FHFA Best Positioned among Federal Agencies to Evaluate Fair Lending Risks with Respect to the FHLBanks

The System supports FHFA having primary authority for supervision and enforcement of fair housing and fair lending laws with respect to the FHLBanks. As the FHLBanks' primary regulator, FHFA has critical insight into the FHLBanks' mission and their unique position in the industry. FHFA also understands and appreciates the important distinctions between the FHLBanks and the Enterprises. Although other federal agencies also may have authority to administer the federal fair housing and fair lending laws, the System believes that FHFA is best positioned to evaluate fair housing

and fair lending risks with respect to the FHLBanks. As a result, the Council requests that the final rule make clear that the FHFA will be the primary federal agency responsible for administering the federal fair housing and fair lending laws with respect to the FHLBanks, notwithstanding appropriate coordination with other relevant federal agencies.

The Council thanks the FHFA for its consideration of its comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Donovan", written over a horizontal line.

Ryan Donovan
President and Chief Executive Officer
Council of Federal Home Loan Banks