June 26, 2023

Federal Housing Finance Agency

Attn: Clinton Jones, General Counsel

400 7th Street SW

Washington, DC 20219

Re: Fair Lending, Fair Housing and Equitable Housing Finance Plans, (RIN) 2590–AB29

Dear Mr. Jones,

The Lincoln Institute of Land Policy and the undersigned organizations appreciate the opportunity to comment on the proposed rule on fair lending, fair housing, and equitable housing finance (EHF) plans. Our views on the proposal overall, including Fair Lending supervision, language access and other matters, are addressed in the comment letter from members of the Underserved Mortgage Markets Coalition. This letter provides more detailed comments on the EHF plan process.

The undersigned organizations see affordable housing in the United States as a key area of focus for our work.

Equitable Housing Finance

We have long seen all aspects of equitable housing finance as a central effort to ensure the Enterprises fulfill their mission to serve low- and moderate-income families and underserved populations. At the outset, we commend FHFA and its able staff for your notice of proposed rulemaking on Fair Lending, Fair Housing and Equitable housing Finance. This was a critical first step at codifying Fair Lending Supervision, EHF plans, the prudential standard framework, a start on data disclosure and language access. We appreciate your good work. Thank you all very much. We support all of the recommendations in the UMMC comment letter. This comment provides additional detail on recommendations pertaining to the EHF plan process.

The original request for information (RFI) on the EHF plans stated the goals of the program as: reducing the racial and ethnic homeownership gap and reducing underinvestment or undervaluation in formerly redlined areas that remain racially or ethnically concentrated areas of poverty or are otherwise underserved or undervalued. If written with sufficient specificity, creating a rule for this program could ensure high quality plans are produced and that the Enterprises make progress toward creating a more equitable housing system. We agree that these are the right goals. It is hard to imagine anything in greater need of attention in our financial markets than racial equity. FHFA staff's proposed rule described the yawning racial wealth gap extremely well. What is still needed is an EHF plan process that is up to the task of addressing our daunting racial wealth gap, which requires a focus on multifamily lending to minority borrowers and access to and stability for the residents of GSE-financed multifamily properties, not just homeownership as the only objective.

Fannie & Freddie are Instrumental for Reducing the Racial Wealth Gap

Even prior to the mortgage crisis and conservatorship, Fannie and Freddie had outsized influence on setting the terms by which consumers could access the mortgage markets. The consumer mortgage market has evolved considerably since the Great Recession almost entirely in the direction of Fannie and Freddie having more influence rather than less. This started with the collapse of private label securitization that still has not regained its pre-crisis market share. Due to a number of factors, federally regulated lenders have ceded a great deal of the origination business to independent mortgage banks since the Great Recession. Large, federally regulated lenders that completely dominated the conduit or loan aggregation business have also stepped back in favor of lenders that are not federally regulated. These trends have lessened the effectiveness of the Community Reinvestment Act's (CRA) retail lending test over time.

The ascendent non-federally regulated lenders are both less likely to stretch to reach underserved borrowers because they are not subject to CRA and they are often less likely to impose the same level of credit overlays as lenders subject to federal risk monitoring. This combination of factors results in the credit box parameters set by Fannie and Freddie becoming increasingly determinative of who has access to mortgage financing and who does not. More than ever, the Enterprises are the gatekeepers for who can get a mortgage, and without concerted, sustained efforts, underserved communities will continue to be shut out from the wealth-building promise of homeownership. We point this out because it underscores the high stakes of getting EHF plan processes right.

Profit and Risk Concerns Leave Little Room for Mission Unless Regulators Insist on Mission

There are many top-notch professionals at both Fannie Mae and Freddie Mac who are deeply committed to the companies' public mission that stems from the competitive advantage of borrowing at near-Government interest rates. We are persuaded that both Fannie Mae and Freddie Mac would prefer to solve the racial wealth gap, all things being equal. But all things are not equal: Competing with EHF, Fannie Mae and Freddie Mac are also under extreme pressure to increase their capital reserves. Under these circumstances, it is unrealistic to expect the Enterprises to prioritize addressing racial equity, unless FHFA sets out a very clear, public, well-measured process for making improvement in racial equity. We think this has been demonstrated in the first year of EHF plans where criteria for success are not specifically identified and progress has been insufficient.

For FHFA to meaningfully shift the approach of Fannie and Freddie to address the racial wealth gap, it must approach compulsory strategic planning by setting in regulation clear guidelines and expectations that **progress** on addressing this problem will be measured and made public. This falls under FHFA's question #6 for the recent EHF listening sessions, pertaining to the process. The staff has posed the right question: "Does the information in the Performance Reports help the public understand and assess the progress the Enterprises have made?"

Unfortunately, more is needed to provide the desirable level of transparency and accountability.

There are five specific elements absent from the EHF process in the proposed rule, all of which are necessary:

1) Plan development guidelines: What does success look like?

2) Oversight: Explicit authority to reject plans that don't meet a minimum standard.

3) Grades: What are the metrics for measuring success and failure?

4) Transparency: Making public FHFA's process for evaluating performance; and

5) Accountability: Disclosing success or failure at the goal level so that the public can meaningfully contribute.

If FHFA makes these 5 changes in the final rule, it will be much better positioned to address racial equity through this initiative.

Value of Strategic Planning Approach

We applaud the FHFA for including a strategic planning model in the notice of proposed rulemaking. Creating a structure for both Enterprises to adopt a plan covering a three-year period with optional yearly updates will allow external stakeholders to provide feedback and comments on how the EHF plans can most impact underserved communities.

We appreciate the value of a strategic planning model to transform the GSEs' approach to racial equity and make lasting change, however, the proposed rule lacks the above enumerated key elements to ensure success. Modeling the proposed rule after the Duty to Serve (DTS) regulation will increase the strength of the EHF plans and would allow stakeholders to engage and track the progress of the plans. In this comment, we will partially expand upon aspects of the chart listed in the appendix, comparing key provisions in the EHF proposed rule and the DTS regulation and highlighting key elements for a successful EHF program. To be clear, it is possible to create a robust EHF plan process that takes a different path from DTS, but there are certain essential elements to a credible compulsory strategic planning process.

Plan Development Guidelines and Authority to Reject

The first step for a successful strategic planning model is guidance on what constitutes a successful plan. Plan development guidance can be flexible, but it must set an expectation that plans will be ambitious. Explicit authority to reject an insufficient plan creates clear consequences for approaches that are too limited. Duty to Serve establishes very specific plan development guidelines. It is possible for FHFA to set less prescriptive EHF plan development guidelines, while conveying that plans must be designed with impact in mind. Under the current proposal, the FHFA may only remove content and substitute "feedback for consideration," however this does not extend to a complete rejection of the plans. We recommend that the final rule incorporates clear plan development guidelines and explicit authority to reject insufficient plans.

Metrics Describing Success and a Public Evaluation Rating System

A strategic planning model cannot succeed to its full potential without having benchmarks to track success. Metrics allow the Enterprises, their regulator, the industry, and the public to measure progress. Creating a defined set of metrics also allows the Enterprises to prioritize their activities and allocate resources to programs that fall behind the progress of other programs. The FHFA should consider defining metrics similar to the DTS program with the highest rating listed as "Exceeds" and the lowest rating listed as "Fails". This rating system would help institutionalize the program with the existing extensive reporting on the success of Enterprise activities. It would also facilitate comparing the success of EHF initiatives with DTS initiatives.

Further, we recommend the FHFA make public its EHF evaluation rating process in its final rulemaking. By failing to disclose the FHFA's evaluation process, it is nearly impossible for external stakeholders to participate in or assess the adequacy of FHFA's evaluation.

Disclosing the EHF plan's successes and failures at a goal (most specific) level is essential to the development of a test and learn system with meaningful public input. Unfortunately, DTS also does not yet include disclosing granular successes and failures. We recommend that the FHFA publish data and evaluation determinations beyond the market level, at the goal level, for EHF now and eventually for DTS as well. We understand hesitancy to publish the shortcomings of the specific components of EHF plans, but the public needs to know the EHF program's strengths and weaknesses to be able to comment on how improvement could be made in the weak areas and how to best leverage the areas where EHF programs are succeeding.

Uniform Reporting Formats and Web-Based Access

Some of the initial challenges of our evaluation of the first set of EHF plans came from the format non-uniform and structure of each Enterprise's plans. The FHFA should consider creating uniform formatting and structure, for the plans and the progress reports, to enable apples to apples comparisons between both Enterprises. Both plans and progress reports should also reside on the FHFA website, like DTS, to promote transparency and allow external stakeholders to easily find and compare the plans and progress.

Conclusion
The proposed fair lending and fair housing rule offers encouraging and ambitious objectives previously unaddressed by FHFA. Yet, for the EHF framework there are at least five specific changes and additions to the proposal we recommend as essential to creating a credible EHF plan process for the Enterprises with greater transparency and accountability.

FHFA has previous experience and established precedents in the Duty to Serve (DTS) regulation and evaluation guidance that could effectively address many of the proposal's shortcomings. Creating a formal process for measuring and disclosing granular success will increase the effectiveness of the EHF program and hold the Enterprises accountable. We strongly urge that the changes we outline be implemented in the final rule. This will increase the likelihood that the EHF plan process succeeds and that the program remains robust and effective over time.

Thank you for considering our views.

Respectfully,

cdcb
Center for Community Progress
Enterprise Community Partners
Fahe
Grounded Solutions Network
Housing Assistance Council
Lincoln Institute of Land Policy
Local Initiatives Support Corporation
LeadingAge
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
Opportunity Finance Network
Prosperity Now
ROC USA
Unidos US

Appendix

Comparing Key Provisions in the Equitable Housing Finance Proposed Rule with the Duty to Serve Regulation

Provision	Duty to Serve Regulation	EHF Proposed	Comments
Strategic Planning Model	**Yes** 12 CFR 1282.32	**Yes** 12 CFR 1292.22 p. 36	If properly administered, strategic planning is useful to test & learn on how the business model can be safely tweaked to reach underserved markets.
Plan Development Guidelines	**Yes** 12 CFR 1282.32(d) DTS Evaluation Guidance 2022-5, chp. 1 pp.1-25.	**No**	Creating a set of plan development guidelines will help the Enterprises identify target populations and build procedure around the parameters of each section, just as with DTS.
Authority to Reject Plans	**Yes** 12 CFR 1282.32(g)(5)(iv)	**No** FHFA should consider explicitly retaining the authority to reject plans. The proposal currently allows FHFA to remove content and provide "feedback for consideration" in its review of the plans, but does not allow for rejecting plans	The authority to reject plans for lackluster proposed actions, objectives, and goals would provide an additional, necessary layer of accountability.
Metrics Describing Success (the grades)	**Yes** see 12 CFR 1282.36(c)(4) "Exceeds" "High Satisfactory" "Low Satisfactory" "Minimally Passing" "Fails"	**No** "Should the rule include required evaluation metrics for progress reports?" Q#8, p. 53.	It is difficult to understand how a strategic planning model can succeed without success metrics. Just as DTS has success metrics, so should EHF.
Evaluation Rating System (how the grades are determined)	**Yes** 12 CFR (a) and (c). DTS Evaluation Guidance 2022-5, chp. 2 pp.28-42.	**No** "Should FHFA issue an evaluation of the Enterprises?" Ibid.	Presumably, FHFA will evaluate progress? By failing to disclose FHFA's evaluation process, it becomes impossible for external stakeholders to meaningfully participate or to assess the adequacy of FHFA's evaluation.

Disclose Success & Failure at the Goal Level	**No** To date, FHFA has only disclosed success & failure at the market level which is wholly insufficient. This information that FHFA has should be disclosed.	**No** As of the proposed rule, there are no public metrics or evaluation system, much less disclosure.	This is a fatal shortcoming for regulating via strategic plan. Disclosing granular success and failure is essential for a test & learn system with meaningful public input.
Uniform reporting formats and FHFA website	**Yes** DTS 2022 Enterprise Quarterly & Annual Reports on fhfa.gov Plans for both Enterprises reside at FHFA.Gov	**No** Each Enterprise is allowed to post its plan on its own website with its own spin on its value and success.	FHFA should create uniform formatting and structure to enable apples to apples comparisons between both Enterprises, both for the plans and progress reports. Having both plans and all progress reports reside at FHFA promotes transparency because it is easier for external stakeholders to find and compare the plans and progress. FHFA should encourage comparison and competition on mission. Just as DTS plans reside on FHFA.gov, so should EHF plans.