

June 26, 2023

*By Electronic Delivery Through the FHFA Website and RegComments@fhfa.gov*

Mr. Clinton Jones  
General Counsel  
Federal Housing Finance Agency  
Constitution Center  
400 7th Street, SW  
Washington, DC 20024

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

Dear Mr. Jones:

Freddie Mac appreciates the opportunity to submit the following comments on the Federal Housing Finance Agency's ("FHFA") Notice of Proposed Rulemaking on Fair Lending, Fair Housing, and Equitable Housing Plans.<sup>1</sup>

As part of our statutory mission to provide liquidity, stability, and affordability to the entire United States housing market, Freddie Mac is committed to addressing homeownership disparities in underserved communities. Freddie Mac released its first Equitable Housing Finance Plan ("EHFP") in 2022, wherein it identified specific initiatives to advance equity, affordability, and sustainability in traditionally underserved communities. Since that time, we have dedicated significant resources to further these goals, including: factoring on-time rent payments into our loan purchase decisions; using Special Purpose Credit Programs to provide greater liquidity in traditionally underserved communities; revisiting and modernizing underwriting practices; developing, expanding, and enhancing offerings to increase the supply of affordable homes and rentals; and launching initiatives to increase diversity in the housing finance industry. These efforts expand access in a manner consistent with a safe and sound approach to housing finance.

Fair lending compliance is integrated throughout our operations and decision-making processes. Freddie Mac is committed to Fair Lending Compliance and achieving the goals set forth in the Equitable Housing Finance plan through scalable solutions that are durable throughout the economic cycle.

## **I. OVERVIEW**

Based on our commitment to scalable and durable solutions, we have identified a handful of issues that we respectfully request be clarified in the Proposed Rule to maximize flexible, clear, and pragmatic solutions.

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<sup>1</sup> Fair Lending, Fair Housing, and Equitable Housing Finance Plans, 88 Fed. Reg. 25293 (April 26, 2023) (to be codified at 12 C.F.R. pt. 1293) (the "Proposed Rule").

*Flexibility.* Freddie Mac supports flexibility in developing EHFPs, including in setting priority goals, performance metrics, stakeholder engagement, and discretion to provide program updates. Such flexibility encourages innovation and allows each Enterprise to develop EHFPs in a manner that accounts for their respective business models and market footprints. Flexibility also allows for more safe and sound EHFPs that are responsive to a dynamic and evolving market.

*Clear and Pragmatic Compliance Expectations.* In the Proposed Rule, FHFA provides clear and practical guidelines and expectations of the Enterprises in many instances. Freddie Mac supports such clarity and pragmatism. Well-defined regulatory standards are essential as the Enterprises develop compliance controls, procedures, and processes. To further facilitate these aims, we respectfully recommend a few clarifying changes, including that “meaningful” actions that enhance equity, even if they fulfill other Enterprise objectives and goals, are considered and given credit for EHFPs. We also recommend that FHFA provide additional guidance on FHFA’s UDAP expectations for compliance with the Federal Trade Commission Act’s prohibition on unfair and deceptive acts and practices (“UDAP”). Further, inclusion of the EHFP in Prudential Management and Operational Standards (PMOS) may result in unnecessary complexity and lack of clarity within the context of the PMOS financial safety and soundness compliance framework. There already exist ample enforcement and regulatory authorities to address failure to comply with the EHFP requirements. In addition, consistent with current obligations and practice, we recommend that the Proposed Rule text require the board of directors to *oversee* and, where appropriate, provide *effective challenge* (as opposed to *direct*) the operations of the Enterprises in conformity with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices. Finally, we recommend certain revisions and clarifications on, among other things, implementation timeline and data collection.

## II. COMMENTS AND ANALYSIS

### A. Fair Housing and Fair Lending Compliance

#### 1. Board Responsibility

Proposed Section 1293.11(c) states that the board of directors “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” (emphasis added). We are concerned that this language may not fully align with the appropriate oversight role of the board. Moreover, truncating the appropriate roles of the board of directors and management may interfere with the directors’ ability to avail themselves of the protection of the business judgment rule under the applicable jurisdiction. Use of the term “direct the operations” could suggest that the board of directors has more than an oversight role for certain actions and steps that are properly the responsibility of management. We respectfully suggest clarifying that the board of directors is responsible for governance and oversight of senior management, and, where appropriate, providing effective challenge. Management has responsibility for running and directing the day-to-day business of the regulated entity. By amending the text from “direct” to “oversee,” the regulatory text would better reflect the delineation of obligations between the Enterprise’s board and management.

## 2. Certifications of Compliance with Law

The Proposed Rule would require an Enterprise to broadly certify compliance with fair housing and fair lending laws, as well as compliance with UDAP, with each of its regular reports.<sup>2</sup> The commentary to the Proposed Rule suggests certification language to implement this requirement that would have an Enterprise certify it “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.”<sup>3</sup>

Freddie Mac is fully committed to complying with fair housing and fair lending laws, but we are concerned with the breadth of such a certification and the potential implications. As written, the Proposed Rule arguably requires an Enterprise to certify absolute compliance with the enumerated laws.

Though a laudable goal, certifying to complete compliance with fair housing and fair lending laws would be virtually impossible given the dynamic and changing jurisprudence in this area and the fact- and policy-specific inquiry required for assessing compliance. Neither fair housing and fair lending laws nor UDAP require proof of intent or knowledge of a violation. Any certification could at most be based on the Enterprise’s best assessment of the law and the information available to it at that moment, but that understanding could later be found to be inaccurate based on newly acquired information or new interpretations by a court or by a regulator. The proposed certification language thus imposes a significant burden on the certifying officer in exchange for uncertain gain.<sup>4</sup>

FHFA notes that similar attestations are required by other federal agencies, including for Community Development Block Grants (“CDBG”) and consent decrees and settlement agreements by the Department of Justice and the U.S. Department of Housing and Urban Development in housing and lending discrimination cases. But CDBG certifications stem from express statutory requirements and generally relate to keeping appropriate track of government funds expended.<sup>5</sup> And settlement agreements and consent decrees that require future commitment not to engage in specific conduct that violated fair housing and fair lending laws are not equivalent to certification on an ongoing, regular basis that an entity has complied with *all* current *and future* interpretations of fair housing and fair lending laws. Thus, the cited examples are more specific and cabined than the proposed certification.<sup>6</sup>

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<sup>2</sup> Proposed Rule, 12 C.F.R. § 1293.12(b).

<sup>3</sup> 88 Fed. Reg. at 25302.

<sup>4</sup> The Proposed Rule states that this additional certification requirement would “provide additional incentives” to the board and management to ensure compliance with fair housing and fair lending laws in their operations. Freddie Mac’s proposed language below creates those additional incentives, but we also note that strong incentives already exist; in the required reporting statute for regular and special reports, Congress imposed a three-tier penalty scheme governing the submission of any “false or misleading” report including daily fines for unintentional error or late submissions, increased fines for failure to correct, and a fine of a \$1,000,000 per day for knowing or reckless disregard for the accuracy of the report. *See* 12 U.S.C. § 4514(c).

<sup>5</sup> *See, e.g.*, 42 U.S.C. § 5304(b)(1), (2), (6) (“Certification of enumerated criteria by grantee to Secretary”).

<sup>6</sup> FHFA also refers to the Enterprises’ own requirement for certifications of compliance with relevant laws from their seller/servicers. Such certifications exist to limit liability to Freddie Mac with respect to seller/servicer conduct that it cannot reasonably be expected to know about, assess, or control. Indeed, a court recently relied on discovery evidence

Freddie Mac respectfully suggests that Congress already provided appropriate requirements for a certification with respect to a regular or special report. In 12 U.S.C. § 4514, “Authority to Require Reports by Regulated Entities,” Congress enacted a comprehensive regime authorizing FHFA to require regular and special reports on Freddie Mac’s activities and operations that included a mandatory “declaration” requirement specifying that such reports are “true and correct to the best of such officer’s knowledge and belief.”<sup>7</sup> And requiring such a certification would be consistent with current FHFA practice to date. When FHFA requires specific additional certifications, the certifications conform to the requirements of section 4514. For example, the regulatory certification requirement for the Affordable Housing Activity Report and the Annual Mortgage Report is for an officer to certify: “To the best of my knowledge and belief, the information provided herein is true, correct and complete.”<sup>8</sup> And the certification requirement for the Duty to Serve Plan report is “to the best of his/her knowledge and belief, the Enterprise’s historical information used to set baselines and targets is true, correct and complete.”<sup>9</sup> The section 4514 declarations and certifications required by other reports focus on what an individual can reasonably attest to – that the information included in the report is accurate and comprehensive. Freddie Mac respectfully requests that FHFA revise the certification requirement to match the substance of similar attestations, requiring Freddie Mac to certify that the content of the relevant report is true, correct, and complete.

Should FHFA view the existing statutory and regulatory language as insufficient, we alternatively suggest that FHFA revise the proposed rule to also require the Enterprise to certify having established and maintained a compliance program that is reasonably designed to assure compliance with fair housing and fair lending laws, and UDAP, as required and set forth in the existing FHFA Compliance regulation.<sup>10</sup> Tracking the regulatory language, such a certification could require, for example, that, to the best of the certifying officer’s knowledge and belief, Freddie Mac has “established and maintains a compliance program that is reasonably designed to assure that Freddie Mac complies with fair housing and fair lending laws, rules and regulations and internal controls as well as the prohibitions on unfair or deceptive acts or practices and that the report is true, correct and complete.” This language would ensure incentives exist to both include accurate and

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concerning Freddie Mac’s required representations and warranties in order to show that Freddie Mac could not have authorized the allegedly illegal conduct and hence was immune from liability under the *Merrill* doctrine. *Bistline v. DiTech Financial LLC*, No. B293389 (Cal. Ct. App. Aug. 17, 2020) at 12-13. This decision exemplifies and differentiates our need for a certification of compliance with law from our seller-servicers from FHFA requiring the same certification from us, where FHFA has no need for the same protections and has markedly more visibility and ability to evaluate and control Freddie Mac’s conduct. *See also Mendrala v. Crown Mortg. Co.*, 955 F.2d 1132,1141 (7th Cir. 1992).

<sup>7</sup> See 12 U.S.C. § 4514(a)(1), (2), and (4). There is some oversight, litigation, and reputational risk in requiring different, additional certifications beyond those specifically chosen by Congress. *Nat’l Mining Ass’n v. Dep’t of Interior* 105 F.3d 691, 694 (D.C. Cir.1997) (citing *American Petroleum Institute v. Environmental Protection Agency*, 52 F.3d 1113, 1119 (D.C. Cir. 1995)) (“[An agency] cannot rely on its general authority to make rules necessary to carry out its functions when a specific statutory directive defines the relevant functions of [the agency] in a particular area.”); *accord Teva Pharm. Indus. v. Crawford*, 410 F.3d 51, 55 (2005) (noting that “general grant of rulemaking power . . . cannot trump specific portions of the [statute]”).

<sup>8</sup> 12 C.F.R. § 1282.65(a)(2).

<sup>9</sup> Revised Evaluation Guidance, 2022-6 (November 4, 2022).

<sup>10</sup> 12 C.F.R. § 1239.12 (“A regulated entity shall establish and maintain a compliance program that is reasonably designed to assure that the regulated entity complies with applicable laws, rules, regulations, and internal controls.”).

comprehensive data and to develop and maintain a robust compliance regime to identify, address, and mitigate fair lending and UDAP risk.

### 3. UDAP Oversight

In addition to compliance with fair housing and fair lending laws, Proposed Section 1293.11(b) would require Enterprise compliance with UDAP. Freddie Mac would benefit from additional guidance on FHFA’s UDAP compliance expectations. Such guidance could take the form of an advisory bulletin, similar to the fair lending and fair housing compliance guidance outlined in the Enterprise Fair Lending and Fair Housing Compliance Advisory Bulletin.<sup>11</sup> Such UDAP guidance would “give practical guidance for [UDAP] compliance with respect to Enterprise operations” that would help the Enterprise more effectively structure its UDAP compliance controls and procedures.<sup>12</sup> Particularly to the extent that UDAP oversight will expand beyond fair housing and fair lending oversight,<sup>13</sup> additional guidance is particularly helpful to the Enterprises moving forward.<sup>14</sup>

## **B. Equitable Housing Finance Plan**

### 1. Framework for EHFP Regulation

The Proposed Rule would establish EHFP and the proposed regulatory framework as a PMOS under section 1313B of the Safety and Soundness Act (12 U.S.C. § 4513b) and subject to 12 C.F.R. § 1236. Although the Safety and Soundness Act gives FHFA authority to establish PMOS standards, the ten statutory PMOS standards explicitly identified relate to safety and soundness,<sup>15</sup> and do not mention equity, mission, fair lending, or fair housing. Although the eleventh catch-all clause permits the Director to establish “such other operational and management standards as the Director deems appropriate,”<sup>16</sup> governing canons of statutory construction limit the reach of the “other operational and management standards” clause to safety and soundness standards -- the subject matter of the ten preceding listed items. According to the Supreme Court, “[t]he canon of *ejusdem generis* ‘limits general terms [that] follow specific ones to matters similar to those specified.’”<sup>17</sup>

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<sup>11</sup> Federal Housing Finance Agency, AB 2021-04 (December 20, 2021).

<sup>12</sup> *See id.*

<sup>13</sup> *See* 88 Fed. Reg. at 25301.

<sup>14</sup> FHFA asks in Question 3 whether it should include oversight of other consumer compliance and/or consumer protection statutes and regulations in the Proposed Rule. To the extent FHFA does include additional consumer compliance and/or statutes and regulations, Freddie Mac respectfully requests that FHFA also issue detailed guidance on FHFA’s compliance expectations for such statutes or regulations.

<sup>15</sup> The authorized standards turn on matters such as internal controls, audit systems, management of various kinds of interest rate, liquidity, credit and counterparty risk, overall risk management processes, and maintenance of adequate records to enable the Director to evaluate the financial condition of the Enterprise.

<sup>16</sup> 12 U.S.C. §4513b(a)(11).

<sup>17</sup> *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 163 n.19 (2012) (quoting *CSX Transp., Inc. v. Alabama Dept. of Revenue*, 562 U. S. 277, 294, (2011)). *Accord Harrison v PPG Industries*, 446 US. 578, 588 (1980). *Ejusdem generis*, a canon which “instructs courts to interpret a ‘general or collective term’ at the end of a list of specific items in light of any ‘common attributes’ shared by the specific terms”, *Sw. Airlines. Co. v. Saxon*, 142 S. Ct. 1783, 1789 (citation omitted), is applicable to the PMOS statute—a lengthy list of specific items relating to safety and soundness followed by the general term “other operational and management standards.”

PMOS is generally devoted to financial safety and soundness. For example, 12 U.S.C § 1831p(a) provides the “operational and managerial standards” for insured depositories and which consist exclusively of standards focused on safety and soundness. Freddie Mac believes designating the EHFP as a PMOS unnecessarily expands PMOS beyond safety and soundness, and results in undue complexity and a lack of clarity as to compliance within the PMOS framework.

FHFA notes that designating the EHFP as a PMOS would expand the universe of remedies for EHFP noncompliance. The PMOS remedies include the authority to prohibit growth in Enterprise assets, to require the Enterprise to increase its ratio of core capital to assets, prohibit the payment of dividends and stock repurchases, and any other action that will better carry out the purposes of the PMOS section. But the additional PMOS remedies are unnecessary to motivate Enterprise compliance with its EHFP obligations. FHFA already has a wide spectrum of remedies available to it for EHFP noncompliance—consent orders, cease and desist orders, civil money penalties, etc.

## 2. Definition of “barrier”

As part of its EHFP, the Proposed Rule would require the Enterprises to publicly identify “barriers to sustainable housing opportunities faced by one or more underserved communities.”<sup>18</sup> As defined in the Proposed Rule, such barriers would include elements 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.”<sup>19</sup> (emphasis added).

We believe that FHFA intended to codify the current practice of identifying and summarizing barriers to sustainable housing opportunity *related to* the Enterprise’s actions, products, and policies and barriers to sustainable housing opportunity in the housing market that can be reasonably influenced by the Enterprise’s actions. The variance between the Proposed Rule and current practice is subtle but significant. Current practice does not involve the Enterprises identifying their respective roles in *contributing* to such barriers. Assessing whether and how practices *contribute to* barriers potentially creates litigation risk for the Enterprises. without a corresponding benefit. We believe the current practices fulfills the purpose of EHFPs in a meaningful, achievable way.

Freddie Mac thus suggests that FHFA consider changing the definition of barrier to 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 are *related 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.” (emphasis added).

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<sup>18</sup> Proposed Rule, 12 C.F.R. § 1293.22(b)(1).

<sup>19</sup> See Proposed Rule, 12 C.F.R. § 1293.2.

### 3. “Significant” dedication of resources

Proposed Rule section 1293.23(b)(4) would require the Enterprises to identify the value of resources dedicated to supporting identified outcomes in their EHFPs categorized by type of activity and to also summarize the value of additional resources contributed from third parties as a result of the Enterprise’s support of the outcome. Proposed Rule section 1293.25(c)(3) would require the Enterprises take actions which reflect “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.”

Freddie Mac respectfully submits that any such summary of value is likely to result in reputational risk. The EHFP Plans will reflect choices made consistent with management’s business judgment, the needs of the market, and where an Enterprises can make the greatest impact. Entities that seek greater investment in equity will inevitably find the amount insufficient, and those that are skeptical of investments in equity and the Enterprises’ activities in this space may view the expenditures as an inappropriate use of resources. In addition, some may attempt to draw comparison between amounts contributed by each Enterprise without appreciating that the values may not be directly comparable due to the uniqueness of their respective EHFPs.

Further these requirements raise substantial compliance difficulties. First, the amount of resources FHFA would deem to be *commensurate* with the Enterprise’s prominence in the housing market, its resources, and the items enumerated in the proposed text is subjective and would change over time. Second, it is not clear what type of resources qualify for the purpose of the calculation and whether the resources are purely monetary or if other resources qualify (e.g., personnel and time). Third, calculating the “value of resources contributed from third parties” would be challenging to define and potentially burdensome for third parties. Freddie Mac respectfully suggests that FHFA and the Enterprises do what they can to minimize burdens for parties that contribute to equity activities. Fourth, many of these activities may be intertwined with other business activities, making calculations that much more difficult. Given the potential consequences for failing to comply with FHFA’s expectations if the EHFP is a prudential standard, it is particularly important that this requirement be understandable and achievable.

We believe the resource disclosure requirement should be deleted. If it is not, we suggest it be treated as a confidential matter exempt from FOIA and subject to various examination privileges. At a minimum, additional clarity as to “significant” resources, and what commitments are “commensurate” would be very helpful.

### 4. “Meaningful” Actions

Proposed Rule section 1293.25(c)(2) allows “meaningful actions” to serve Enterprise objectives and goals, but also requires that the plan “reflect significant additional action above and beyond actions that are also serving other Enterprise objectives and goals.” Freddie Mac’s Duty to Serve Underserved Markets Plan (“Duty to Serve”) currently deploys a wide array and number of tactics. Similarly, managing and achieving the Housing Goals requires additional strategies. Leveraging these strategies to achieve greater equity encourages the creation and development of sustainable,

high-impact solutions that are durable through various market conditions. Freddie Mac respectfully requests that FHFA clarify that actions that enhance equity, even if they fulfill other Enterprise objectives and goals, are considered and deemed to meet the requirements under the Proposed Rule. Our proposed approach is also consistent with current Duty to Serve and EHFP practice and recognizes that there are efforts and strategies that may produce maximum benefit under both plans. By contrast, requiring segmented tactics may reduce efficiency and impact without benefit to the company or consumers.

Proposed Rule section 1293.25(c)(5) also provides that “[a]ctions that are required to remediate supervisory findings or required as a result of enforcement actions do not qualify as meaningful actions.” The concerns expressed above also apply here. Simply because a matter requires attention does not preclude actions taken to address it from advancing equity or reaching traditionally underserved borrowers. Moreover, the Enterprises are often engaged in meaningful work that impacts equity that is then required by supervisory findings or relates to open MRAs. Freddie Mac believes that the Enterprises should not be precluded from setting equity goals and outcomes that further equity because remedial findings that postdate work on a particular initiative, incorporate ongoing workstreams or otherwise require them. As long as we clearly describe efforts in our EHFP and our actions meet plan objectives, we believe such actions should qualify.

#### 5. Flexibility

The Proposed Rule identifies flexibility as a primary objective of the EHFP.<sup>20</sup> Freddie Mac’s ability to design an innovative and responsive EHFP requires flexibility in setting priority goals, performance metrics, stakeholder engagement, and discretion to provide program updates.

For example, the regulatory requirements concerning the Duty to Serve Underserved Markets allow each Enterprise significant flexibility to establish goals, objectives, and tactics. Each Enterprise has its own mix of sellers and sourcing relationships, as well as its own relationships with industry participants, non-profits, and government agencies. The “baselines” from which each Enterprise will operate to serve underserved communities also vary.

Thus, we support the proposed framework which will allow the structure and content of an EHFP to be based on the unique characteristics and strengths of each Enterprise. Consistent with this principle, we believe that evaluations of EHFPs should consider the unique characteristics of each Enterprise. We also respectfully recommend that any FHFA guidance or additional changes to the EHFP regulatory framework permit similar flexibility.

#### 6. Stakeholder Engagement

Proposed Section 1293.24(a) specifies that “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.” Proposed Section 1293.24(b) would similarly require the Enterprises to “consult with stakeholders, including members of underserved communities and housing market participants, in the development and implementation of their plans and updates.” We agree with FHFA that public input is very important and that interested persons should have

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<sup>20</sup> See 88 Fed. Reg. at 25304.



the opportunity to provide input for the Enterprises to consider. That said, both the Enterprises and the public would benefit from guidance that ensures flexibility in the stakeholder engagement process while also clarifying the Enterprises' responsibilities in the stakeholder engagement process as compared to FHFA's responsibilities. As written, we understand that both FHFA and the Enterprises will gather interested stakeholder input and that the Enterprises *may* consider all of that feedback in the development of its plan or update.

#### 7. Three-Year Plan Period

Proposed Section 1293.22(a) would require the Enterprises to adopt an EHFP every three years. Freddie Mac believes that the three-year plan period strikes the right balance of permitting the Enterprise sufficient time to implement EHFPs while also requiring meaningful progress within a reasonable timeframe. It also allows for concurrent planning with our Duty to Serve Underserved Markets plan period.

#### 8. Timeline

Proposed Rule section 1293.22(j) states that FHFA may, from time to time, issue public guidance on EHFP and EHFP updates. Freddie Mac appreciates guidance that reflects the flexible nature of the EHFP process. Freddie Mac respectfully requests that the effective date of any such guidance pursuant to this section be applied on a go-forward basis, give the Enterprises adequate time to implement any changes, and only apply to the next plan year of three-year plan cycle. For example, guidance given at the end of a calendar year may not be sufficient time to implement in the plan year. Such an approach allows for predictability and gives the Enterprises ample notice to structure their EHFP in a manner that is most responsive to FHFA's direction and goals. Freddie Mac also respectfully recommends that any guidance and timelines recognize and account for the typical mortgage market cycle in developing new programs and products. Developing products and programs and then encouraging their adoption can take several months and even years; thus, Freddie Mac encourages FHFA to recognize that the data may not show the efficacy of a particular program in substantial new acquisition volume in a year or even within a single plan cycle. This pragmatism should be reflected in the reporting requirements themselves and in the presentation of said reports to the public.

In Proposed Rule section 1293.22, FHFA outlines certain specific dates for submission, publication, and review of EHFP plans, updates, and reports. We respectfully request FHFA revise this language to require publication 30 days after FHFA's final review and to allow for unexpected obstacles beyond the Enterprises' control that prevent timely submission. As an illustration of our concern, FHFA's review of a plan may take longer than expected and posting the plans by the proposed deadlines may not be possible. In such scenarios, the Enterprises should not be deemed to be non-compliant with the rule, particularly given that noncompliance can result in enforcement and other actions taken against the Enterprise.

Similarly, Proposed Rule section 1293.22 requires plan "Updates" to be submitted by February 15, of the affected year (and then published by April 15).<sup>21</sup> Performance Reports are due by

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<sup>21</sup> Proposed Rule, 12 C.F.R. § 1293.22(e), (i).

February 15.<sup>22</sup> Freddie Mac respectfully requests that FHFA amend these Proposed Rule sections to expressly permit an Update to be incorporated as a portion of the Performance Report. This will permit a more efficient use of time and resources as the results for a particular year will often be intimately related to the need and contours of a particular Update. Such an incorporation would also increase accessibility and transparency to the public as it would reduce the number of sources a reader would need to consult for EHFP information.

In terms of effective dates, we respectfully recommend that Section 1293.26 (Enterprise board equitable housing and mission responsibilities) and Section 1293.21 (General; Identification of subpart as a prudential standard) become effective in accordance with the Administrative Procedures Act,<sup>23</sup> subject to the following:

- Section 1293.22 – The first EHFP under the Proposed Rule should be for 2025.
- Section 1293.23 – The first performance report subject to the Proposed Rule should be February 2026 and cover the EHFP that begins in 2025.
- Section 1293.24 – The obligation for public engagement under the Proposed Rule should be the later of the effective date of the Proposed Rule or April 1, 2024.
- Section 1293.25 – The Program Requirements should apply to the first EHFP under the Proposed Rule (i.e., 2025).

#### 9. Additional Clarifications

There are a few phrases where additional clarity might be beneficial to the Enterprises and to the public. The need for such clarity is heightened by the potential ramifications to the Enterprise of noncompliance given the proposed prudential management framework for the EHFP requirements as outlined in Proposed Rule section 1293.21(d).

- *“Adopt.”* The Proposed Rule would require the Enterprises to “adopt” an EHFP.<sup>24</sup> In the Duty to Serve context, the Enterprises are required to “submit” a plan. Freddie Mac respectfully requests FHFA amend the Rule to require that the Enterprises “submit” a plan for consistency.
- *“Facilitative.”* Proposed Rule Section 1293.25(d)(5) requires the Enterprises to establish goals that are “facilitative of measuring Enterprise progress, comparing Enterprise performance, and ensuring public accountability.” Consistent with the goal of flexibility, we respectfully submit that this language should be removed for clarity or, alternately, clarified to indicate what the reference points and baselines would be for measuring progress and to what entity or metric comparisons would be made..
- *Ensure . . . reli[ance] on adequate information.* Proposed Rule Section 1293.25(a) would state that the “Enterprise shall ensure that a plan relies on adequate information.” Freddie Mac respectfully proposes the language be amended to state that the “Enterprise shall document the information used to identify the undeserved community or communities.”

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<sup>22</sup> Proposed Rule, 12 C.F.R. § 1293.23(c).

<sup>23</sup> 5 U.S. Code § 553(d).

<sup>24</sup> Proposed Rule, 12 C.F.R §§ 1293.2; 1293.22(a).

Alternatively, we respectfully request that FHFA clarify the language to indicate when information will be deemed adequate and how to demonstrate that a plan relies on such information.

### C. Data Collection

Proposed Rule Section 1293.31(b) would require the Enterprises to collect, maintain, and provide to FHFA data on whether applicants and borrowers have completed homeownership education or housing counseling and information about the homeownership education. Current Supplemental Consumer Information Form (SCIF) instructions require information on housing counseling and homeownership education only when such counseling or education is required or otherwise applicable to a loan program. To aid the Enterprise in developing a data monitoring and compliance program, the Proposed Rule should indicate what “information about the homeownership education” the Enterprises must gather, for what type of loans, and how often the Enterprises must submit this information. In addition, guidance should address logistics of data collection, including how the Enterprises should handle non-response from Sellers (or borrowers who do not complete the relevant questionnaire).

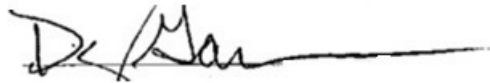
### III. CONCLUSION

Freddie Mac appreciates the opportunity to provide comments on this proposal. We look forward to working with FHFA on implementing this rule.

Sincerely,



Dennis Hermonstynne Jr.  
Senior Vice President – Chief Compliance Officer



6/26/2023

Danny Gardner  
Senior Vice President – Single-Family Mission & Community Engagement