June 26, 2023

The Honorable Sandra Thompson
Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20024

Re: RIN-2590-AB29, Proposed Rulemaking on Fair Lending, Fair Housing, and Equitable Housing Finance Plans

Dear Director Thompson:

The National Community Reinvestment Coalition (NCRC) appreciates this opportunity to provide our comments on the Federal Housing Finance Agency's (FHFA's) Fair Lending, Fair Housing, and Equitable Housing Finance Plans proposed rule. We strongly support FHFA's steps in furtherance of racial equity and broader economic opportunity, including the proposed measures to codify the Equitable Housing Finance Plan (EHFP) requirement and to strengthen aspects of fair lending oversight. We also recommend that FHFA strengthen the proposed rulemaking in a number of important ways, as detailed below.

NCRC and its grassroots member organizations create opportunities for people to build wealth and participate more fully in the nation's economy. We work with community leaders, policymakers and financial institutions to champion fairness and end discrimination in lending, housing and business. NCRC was formed in 1990 by national, regional and local organizations to increase the flow of private capital into traditionally underserved communities. We have grown into an association of more than 700 community-based organizations that promote access to basic banking services, affordable housing, entrepreneurship, job creation and vibrant communities for America's working families.
Our members include community reinvestment organizations; community development corporations; local and state government agencies; faith-based institutions; community organizing and civil rights groups; minority and women-owned business associations, and social service providers from across the nation.

Our comments below voice our support for robust, structural reforms to more effectively safeguard against discrimination and to affirmatively promote equity throughout our federal housing finance system. The systemization and codification of such reforms is much needed to provide clarity for the GSEs, lenders, and stakeholders including consumer and fair housing groups as to the extent of the GSEs' fair housing and fair lending obligations. As FHFA describes in its RFI, racial disparities in housing access and stability, homeownership and related wealth building, and housing quality (including access to healthy housing and neighborhoods) remain stark and significant throughout our nation's housing markets. This in turn has consequential impacts for both individuals and communities in terms of quality of life, intergenerational opportunity, health, educational attainment, and economic participation. Such disparities have clear roots in historical discrimination by both public and private actors across the housing sector, but are also perpetuated by present-day discrimination, bias, and industry practices that reinforce racial inequity.

1) Support for Codification of the Equitable Housing Finance Plan Requirement

We thank FHFA for its proposal to codify the EHFP requirement, given the important potential of the enterprises for either perpetuating or helping to remedy racial disparities in our housing markets. Given those persisting disparities and the practices that continue to drive them, the codification of measures to promote equity is not only an appropriate but also critical use of FHFA's authority and its responsibility as conservator. The extent of the disparities at issue, and their significant consequences, call for FHFA to install a systematized, comprehensive, and meaningful process that requires the GSEs to examine the ways in which their policies and activities can better promote equity and to take actions accordingly. We support FHFA's codification of the EHFP requirement, while also setting forth recommendations for a number of ways that the EHFP should be strengthened, below. As a primary consideration, FHFA should make clear that aspects of the EHFP are designed to fulfill fair housing obligations, and must therefore center on addressing significant barriers to racial equity in housing finance.

FHFA's establishment of the EHFP requirements is well grounded in FHFA's established legal authority as conservator and is a needed and appropriate step to fulfill FHFA's fair housing obligations, as well as the GSEs' obligation to reach underserved communities. Congress has charged the FHFA with ensuring that the federal housing finance system operates so as to adequately address the needs of moderate and low income households, including those historically underserved by the markets. In addition, the Fair Housing Act requires that FHFA affirmatively further fair housing, that is, that it take active measures to advance the aims of the Act. The contours of the AFFH obligation in the housing finance context are addressed further below, but in clear terms, FHFA's AFFH duty requires that it (and the GSEs in turn) squarely address and take active steps to remedy racial discrimination and disparities.

The AFFH duty is set forth in the Fair Housing Act and has been reinforced and interpreted over the decades within the federal courts, for example requiring HUD to provide for an "institutionalized method" to AFFH within its federal housing program administration. See *Shannon v HUD* [cite]; *Westchester* [requiring race – cite].

The statutory and legal authority undergirding the EHFP requirement stands alongside an ample factual and policy foundation, given the extensive documentation of racial inequities and the practices that drive them. Among the numerous examples of policies and activities that deepen or fail to address racial inequality in the housing sector, we highlight several here. This list is not intended to be comprehensive, but rather to provide examples that serve as support for the EHFP requirement and for the need for the EHFPs to specifically address race and racial inequities (which may be accompanied by, but should not be replaced by, steps to address other disadvantaged populations, as per FHFA's fair housing duties).

Appraisal Bias

Instances of egregious appraisal discrimination have received a lot of media coverage in recent years.[1] Appraisal bias matters because it robs Black and Brown people of wealth through homeownership.[2] It is particularly pernicious since homeownership is the primary driver of wealth for most Americans, and closing the homeownership gap is key to closing the racial wealth gap.[3]

NCRC released a report in October 2022 on discriminatory home appraisals in the Greater Baltimore Area.[4] NCRC recruited Black/White interracial couples for 7 fair housing tests to examine whether there was a difference in homes' valuation when White partners were present for home appraisals compared to Black partners.[5] In each test, an appraisal was performed twice—once with the White partner and once with the Black partner—for a total of 14 tests.[6] We found that White homeowners generally received higher valuations than Black homeowners.[7] One interracial couple's home was appraised at $46,000 higher when the White partner was present compared to when the Black partner was present.[8] There was also a difference in the way that appraisers treated Black and White homeowners.[9] Black homeowners generally received unprofessional treatment from appraisers.[10] One appraiser took 11 weeks to complete a report for a Black homeowner while another appraiser failed to complete an appraisal for a Black homeowner altogether.[11] By contrast, White homeowners did not experience such neglect.[12]

A 2021 study from Freddie Mac further corroborates this trend.[13] It examined 12 million appraisals "for purchase transactions" that it received from 2015 through 2020, and found that Black and Latino census tracts were more likely to receive appraisal values lower than contract price than White census tracts.[14] More specifically, 12.5% of properties in Black census tracts received appraisal values lower than contract price.[15] For properties in Latino census tracts, the difference was even more glaring—15.4% of properties in Latino census tracts received appraisal values lower than contract price.[16]

Disparities in Tenant Screening

How landlords choose tenants is highly subjective, and can cause disproportionately negative outcomes for renters of color. Landlords often rely on criteria such as credit scores, eviction records, criminal records, and source of income to determine whether or not to extend a conditional offer to prospective tenants.[17] Screening criteria often becomes stricter or more relaxed depending on the housing market; in a market with more available rental units, landlords are more likely to relax these criteria compared to a market with fewer units where they more closely adhere to these criteria.[18] Conversely, in a market with many qualified applicants, a criminal conviction or past eviction can make it harder for those applicants to find an apartment.[19]

Bias in the tenant screening process matters because biased data can cause Black, American Indian and Alaska Native, Latino, and Asian people to have less access to a critical source of housing. Data reveals that most Black people are renters. According to 2019 American Community Survey (ACS) 5-year estimates, the Black homeownership rate was only about 41.8% while the rental rate was about 58.2%.[20] Although American Indians and Alaska Natives are less likely to be renters than Black people, rental housing is still a significant source of their housing. According to 2019 ACS 5-year estimates, American Indians and Alaska Natives had a homeownership rate of about 54.3% and the rental rate was about 45.7%.[21] The homeownership rate for Latinos was similar to the homeownership rate for American Indians and Alaska Natives. 2019 ACS 5-year estimates reveal that the Latino homeownership rate was about 47.3% and their rental rate was about 52.7%.[22] In other words, the data reveals that slightly over half of Latinos were renters in 2019. The Asian homeownership rate was about 59.6% while the rental rate was about 40.4%.[23] In other words, about four-in-ten Asian people rented their own homes that year. Based on this data, all people of color have a relatively low homeownership rate and depend on rental housing compared to White people whose homeownership rate was 71.9% and the rental rate was 28.1%.[24] Some landlords' decision to ban people with criminal records from applying for housing disproportionately impacts Black and Latino applicants due to their overrepresentation in the criminal justice system.[25] Black people are incarcerated in state prisons at about 5 times the rate of White people while Latinos are incarcerated at 1.3 times the rate of White people.[26]

Credit Scores in the Homebuying and Tenant Screening Process

Current credit scoring models reflect decades of bias that robbed wealth from Black communities and other communities of color, and can have a disproportionately negative impact on Black and Latino prospective tenants.

Less wealth means less money to pay bills in the event of an emergency.[27] Key events like government-sponsored redlining from the 1930s through the 1960s and the exclusion of Black soldiers from the homeownership provisions of the G.I. Bill following WWII meant that many Americans could not access homeownership, as well as the accrued wealth from homeownership for future generations to inherit.[28] Before the Great Recession, lenders targeted people of color for predatory mortgages.[29] Homeowners of color suffered higher rates of foreclosure during the Foreclosure Crisis, which erased more than $400 billion, and devastated many of these homeowners' credit scores.[30]

Studies have captured the collective damage that these practices have had on the credit scores of people of color. According to a 2010 study, more than half of residents in predominantly Black zip codes in Illinois had credit scores lower than 620.[31] In majority-Latino zip codes, a little under a third of residents had a credit score of less than 620, and slightly under half of residents had credit scores that were more than 700.[32] In comparison, only about one-fifth of Illinois residents had credit scores less than 620, and a little over one-sixth of inhabitants of predominantly White zip codes had credit scores lower than 620.[33] Scores in mostly White areas are much higher due to decades of advantages that the government provided them with in contrast to the disadvantages that government-sponsored discrimination wrought on communities of color.[34] Slightly more than two-thirds of residents in predominantly White zip codes had scores over 720 while only one fourth of residents in predominantly Black zip codes had scores above 700.[35] A 2004 study revealed that White people's median credit score in 2001 was about 738, but the median score for Blacks and Latinos was 676 and 670 respectively.[36]

Source of Income Discrimination

Landlords' rejection and economic exploitation of prospective tenants who use housing vouchers to pay their rent presents another challenge for renters when they search for housing. Exclusion from rental housing limits voucher holders' ability to access safe, decent, and affordable housing.[37] The purpose of the Housing Choice Voucher (HCV) program (also known as Section 8) is to deconcentrate poverty by allowing families to choose where they want to live.[38] Rejecting prospective tenants because they use housing vouchers limits housing choice, particularly for Black renters. According to Fannie Mae, Black renters are overrepresented among voucher holders relative to their share of the renter population. Black people are 20% of the renter population, but comprise 48% of voucher holders.[39] Rejecting renters who use vouchers to pay their rent can thus have an outsized negative impact on Black renters, as well as harm other low-income households. Discrimination on the basis of source of income may violate state or local laws that provide protections on this basis, or it may reflect disparate treatment if Black and White holders are treated differently.

2) Improve the EHFP Framework: set priorities and require metrics

While FHFA's actions to require (and now, to codify) EHFPs are laudable and much-needed steps, the proposed requirements are in need of improvements to ensure that key barriers to equitable housing finance will be addressed. We appreciate that the current requirements enable innovation by the GSEs across a range of activities and that they are sufficiently broad to serve as a platform for the GSEs to work comprehensively toward identifying issues and opportunities that impact equity. However, the breadth of discretion and the lack of focus on measurable outcomes present missed opportunities for ensuring that there are strong, consistent steps forward in future years and for ensuring that the most significant and impactful actions available are taken to address racial disparities.

We therefore urge FHFA to strengthen aspects of its EHFP requirements. The final EHFP regulation should provide for FHFA to set outcome-based performance metrics for GSE equitable housing finance activities. It should also should set forth clear expectations as to the need for the GSEs to focus on and prioritize high impact activities and policy changes and to identify and address any significant barriers that the GSEs' own policies pose to more equitable housing opportunities, as well as areas where the GSEs can exert significant market influence to that end. The regulation should set forth core categories of concern, which the GSEs would be required to address in their plans, as well as enabling an additional set of innovations and reforms that could vary among planning cycles (with the intent of piloting additional activities and reaching a broader set of underserved populations, while still retaining focus on key racial equity imperatives and impacts). Core categories should include those shown to be significant drivers of racial disparities in the housing market. These should include appraisal reforms, alternatives to credit scores or improvements to credit scores, and improvements in tenant screening to avoid discrimination. As discussed above, these features of the housing market impede choice and wealth creation for people of color. They should also include the fuller list of fair housing impediments and considerations provided in the following section. We urge FHFA to expressly codify areas of AFFH performance into its EHFP requirements (as well as incorporating AFFH criteria into an expanded scope for fair housing and fair lending oversight). We also recommend that FHFA specify that the EHFPs must address both homeownership and rental issues by taking significant steps in both areas.

3) Systematize policies and oversight to further fair housing

As stated above, the EHFP requirements are rooted in multiple authorities, including fair housing obligations. The implementation of FHFA's AFFH obligation must focus squarely on intended aims for the Fair Housing Act, to redress discrimination and segregation and their harms – that is, AFFH requires that FHFA and its oversight activities squarely address race and racial impacts.

As stated above, FHFA should make mandatory a number of AFFH-related requirements within the EHFP framework. Many of these criteria should mutually reinforce new and expanded criteria for fair lending/fair housing that are included in enforcement, GSE and FHLB examinations, and other oversight activities. In the current conceptualization of FHFA's fair housing regulatory scheme, there is a regulatory gap between the proposed content that codifies planning requirements to promote equity and the content that codifies anti-discrimination oversight: while affirmative fair housing obligations and actions should be mandatory and not discretionary, they are dealt with only as optional offerings in the EHFP framework and at the same time are not assessed through the fair lending oversight framework. AFFH considerations should be built into both the oversight/enforcement framework and the planning framework.

As well as safeguarding against discrimination, federal entities must ensure that they are furthering fair housing by proactively taking steps to remedy segregation and its harms, including related disparities in housing access, stability, and quality. Each of these harms relates back to the patterns of spatial inequality and economic vulnerability that residential racial discrimination so firmly entrenched in communities across our country. Mandatory fair housing planning and oversight criteria should include:

- Support for AFFH in other federal housing programs (such as siting outcomes for LIHTC and HOME properties, as well as Housing Choice Voucher households)
- Policies impacting equitable access to homeownership (such as pricing frameworks, availability of SPCPs, loan terms, and use of credit scores)
- Extent and efficacy of systems in place to prevent discrimination in financed multifamily housing (including discriminatory patterns in evictions, use of fees, and tenant selection)
- Fair housing criteria to promote housing security (including secure and healthy housing for renters and safeguards against financing displacement of either LMI homeowners or renters)
- Fair housing in relation to climate and environmental justice

- Promotion of housing choice and access to highly-resourced areas

We also urge FHFA to expand the scope of its fair lending and fair housing oversight framework to incorporate AFFH considerations (for both homebuyers and renters) as well as robust measures for direct anti-discrimination enforcement. As stated above, the GSEs and the FHLBs should not finance discrimination. Further, they should institute systems to ensure that the market activities they support serve to proactively advance and do not conflict with fair housing aims. Anti-discrimination oversight and enforcement, as required by the Fair Housing Act and the Equal Credit Opportunity Act, should be viewed as a pillar of FHFA's conservatorship responsibilities, and FHFA should go further to provide for stronger and more systematic measures to ensure that the GSEs are not in any respect supporting discrimination.

With regard to multifamily housing, AFFH measures should include requirements for the GSEs to proactively set of standards for strong fair housing performance in financed properties, with regard to siting, tenant selection and treatment, and habitability. This includes providing for strong fair housing standards in eviction protections and tenant selection criteria (such as use of criminal records and source of income discrimination). It also includes siting criteria that prevent the reinforcement of segregation and that provide for broader housing choice, including in areas of opportunity; as well as the prevention of displacement. The GSEs should develop protocols that prevent their purchase of multifamily mortgages that finance the displacement of lower income and people of color tenants when multifamily units are converted to higher income housing including in neighborhoods that are undergoing gentrification. These fair housing protections should go beyond pilot measures and extend throughout the breadth of GSE financed housing.

4) FHFA must include evaluations of local performance in the Equitable Housing Finance Plan Requirements

In comments over the years to the FHFA, NCRC has asserted that the FHFA must assess the performance of Fannie Mae and Freddie Mac on a local level. The Affordable Housing Goals establish national goals, not local goals. At this point, the Equitable Housing Finance Plans also do not require an assessment of performance on a local level including metropolitan areas and rural counties. NCRC believes that evaluations and accountability of local performance enhances the FHFA's and GSE's compliance with their legal obligations and would enhance bank performance under the Community Reinvestment Act (CRA).

Local evaluations enhance adherence to Congressional intent

The FHFA represented that its proposed rule would “make changes to the Equitable Housing Finance Plan program to promote greater accountability for the Enterprises and public transparency.”[40] The proposal would also augment the availability of data for the FHFA and the public. It stated that “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* (italics added) and expanded program requirements.[41]

NCRC believes that enhanced public accountability and data reporting entails information on the local performance of the GSEs. Otherwise, community organizations, elected officials, local public agencies, and other stakeholders cannot effectively hold the GSEs accountable for performance in their communities. The FHFA would have the best chance of achieving its objectives of accountability and transparency if it implements a local evaluation of performance as part of the Equitable Housing Plan process.

The FHFA quotes the GSEs’ authorizing statutes as requiring the GSEs to “promote access to mortgage credit throughout the Nation (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.”[42] This legal requirement cannot be effectuated only with national goal setting. Under the Affordable Housing Goals, a GSE can meet their goals by focusing on areas of the country in which it is easiest to purchase loans made to low- and moderate-income borrowers and/or in underserved communities and communities of color. This gaming does not improve the distribution of capital and mortgage credit throughout the nation across the plethora of metropolitan areas, rural areas and underserved areas.

In fact, the general public does not know if gaming occurs or how the GSEs distribute their mortgage purchases across the country because the FHFA does not provide maps or tables that reveal the distribution of GSE activity. To eliminate the possibilities of starving parts of the country of capital and credit, national goal setting must be complemented by local evaluations of GSE performance.

The FHFA recognizes the importance of considering local conditions and local GSE performance but then provides too much discretion to the GSEs in addressing performance in local areas and underserved communities. In a discussion about the benefits of disaggregated data, the FHFA observed that while “the overall homeownership gap between Black and White homeowners is 29.6 percentage points, in Minneapolis the gap rises to 50 percentage points.”[43] Disaggregated and local analysis provides a precise measurement of access to credit and homeownership, which will vary across the nation for traditionally underserved communities. A lack of this type of evaluation therefore falls short of the statutory duty to ensure the equitable availability of credit across the country and within various local communities.

Underserved areas are an important concept but not sufficient for evaluating local performance

The FHFA implicitly acknowledges the importance of local evaluation by developing a definition of underserved areas and allowing GSEs to address needs in these areas in their Equitable Housing Finance Plans. The FHFA proposes to define an underserved community 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."[44]

In order to better serve underserved areas, a measurable goal in an Equitable Housing Finance Plan can either be place-based or "may seek to provide people the opportunity to obtain sustainable housing opportunities more broadly."[45] A place-based goal is straightforward in that a GSE develops a measurable goal for a group of census tracts in which households receive a low level of loans per capita, though measures to prevent displacement should be included (NCRC also appreciates the FHFA listing formerly redlined areas as those that could qualify as underserved).[46] While the proposed underserved areas concept is an improvement in the Equitable Housing Finance Plans, it is not sufficient in itself for ensuring adequate GSE service across localities in the United States. The proposed Equitable Housing Plan requirements could allow GSEs to focus on underserved areas in the easiest to serve localities but to leapfrog areas like Minneapolis with wide disparities in the Black-White homeownership gap.

NCRC's proposal for local evaluation metrics would ensure a wider distribution of capital and credit

NCRC proposes that the FHFA add to its proposed regulation that it would conduct an analysis of local GSE performance once every three years to coincide with the development of new GSE Equitable Housing Finance Plans. The FHFA would identify the following distinct groups of metropolitan areas and rural counties. This proposal is based on previous NCRC research and white papers:[47]

- Areas in which the GSEs and the primary market both perform well in reference to demographic benchmarks. This could be measured as the percentage of loans being similar to the percentage of households that are low- and moderate-income or people of color.
- Areas in which both GSEs (or one GSE) outperform the primary market. This could be measured by the percent of loans the GSEs purchase that are made to people of color or modest income borrowers being higher than the percent of loans lenders make to these populations.
- Areas in which the primary market outperforms Fannie Mae and/or Freddie Mac in serving traditionally underserved populations.
- Areas in which both the primary market and the GSEs are underperforming in that the share of loans are the lowest compared to the percentage of low- and moderate-income or people of color.

The federal bank agencies proposed performance measures and thresholds for comparing banks in CRA exams to industry and demographic benchmarks that are similar to NCRC's proposal.[48] The federal agencies used historical CRA performance of banks over several years to develop its proposed lending test measures in their proposed changes to the CRA regulation. NCRC urges the FHFA to consult with the federal bank agencies in developing local evaluation measures for the GSEs.

Accompanying the local evaluation, the Equitable Housing Finance Plans would require the GSEs to describe how they will maintain performance in the areas in which they do well. They could describe how they perform well in these metro areas or rural counties; do partnerships with nonprofit organizations or local government agencies help the GSEs reach underserved populations, for example? The Equitable Housing Finance Plans would then require the GSEs to focus on areas in which they are being outperformed by their counterpart GSE and/or the primary market. The Plans would also address areas where neither the primary nor secondary market is performing well. The GSEs can describe underwriting reforms, product changes, and new marketing approaches that would help them improve performance in their areas where they are lagging.

Goals could describe how, as the FHFA stated, a GSE would reduce significant disparities "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."[49] The FHFA should decide what is the minimal progress required for the GSEs to meet or exceed the goals on their Equitable Housing Finance Plans. For example, the FHFA could require that by the end of the three years in an Equitable Housing Plan, the GSEs must decrease disparities between the share of loans lenders issue to low- and moderate-income borrowers and the share of loans they purchase made to these borrowers by at least one percentage point in at least one third of the areas in which the GSEs were underperforming.

At the very least, performance in the localities grouped by the above categories should be displayed clearly in color coding on maps as well as numerically in FHFA tables at the beginning and end of the Housing Finance Plan terms. In this manner, the general public and local stakeholders have an improved ability to hold the GSEs accountable and approach them for partnership opportunities, particularly in geographical areas where they lag.

Banks' CRA requirements are local in nature. CRA examiners assess banks in metropolitan areas and in rural counties where they have branches. In addition, the federal bank agencies have proposed to add assessment areas to include geographical areas without branches that exceed the thresholds of 100 home loans or 250 small business loans.[50] These areas lacking branches nevertheless are metro areas or rural counties in which banks have engaged in a significant amount of business activity and must therefore be held accountable for their CRA performance. Banks would be aided significantly in serving a variety of local areas if GSE evaluations included assessments on a local level, which would increase GSE local purchasing activity and improve the banks' abilities to secure financing for their lending activity.

5) Public input requirements must be more rigorous than proposed

Since NCRC recommends that the FHFA evaluate local performance, the proposed public input requirements must be enhanced to provide more opportunities for the public in different localities to offer their views on GSE performance. The FHFA proposes that it engage the public before June 15 in order to gather input on GSE performance and to forward public input to the GSEs as they formulate their Equitable Housing Finance Plans.[51] Since the GSEs must provide the FHFA with their draft plans by September 30[52], the proposed date for FHFA engagement is too late in the year. NCRC recommends that the FHFA engage the public much earlier in the year and that the FHFA explain that the GSEs will be soliciting public input as well during the course of the year.

NCRC further recommends that each GSE hold public meetings in each of the nine census divisions to solicit public input during the year. The United States census divides the nation into four regions and further sub-divides the regions into divisions.[53] Each of the nine meetings would be held in a different division and would thus maximize opportunities for the public residing across the country to participate. Virtual options for participation should also be made available. The plans cover three years so their development must include robust participation from the public in distinct regions and divisions across the country.

The GSEs must be required to present the public with the FHFA local analysis described above so that the public can know before the meeting whether the GSEs are leading or lagging in their localities in terms of providing access to credit. The GSEs can supplement the FHFA analysis with any additional analyses or explanations they desire.

The proposed rule merely states that the GSEs are to consult with the public as they are developing their plans. This is not sufficient since it could allow the GSEs to choose relatively few national level stakeholders to consult at a meeting held just once during the year. Instead, the GSEs must engage the public and stakeholders that truly represent large cities, smaller towns, rural counties, and tribal areas. Further, the GSEs should be required to present some initial ideas for improvement or goals as well as local data. The proposed rule does not require the GSEs to provide any specific information to the public. This could lead to consultations with the public that merely check a regulatory box but do not generate any meaningful exchange of information and recommendations.[54]

The proposal requires the GSEs to provide annual updates and performance reports during the three-year course of the Equitable Housing Finance Plans. The proposal requires the GSEs to publish these updates by April 15 of each year.[55] After publication, the GSEs must be required to hold nine meetings, one in each of the census divisions, to provide opportunities for discussions about GSE performance and how performance can be improved. Several opportunities for public discussions increase the accountability of the GSEs and also the possibilities of generating creative ideas for improving performance.

6) Requirements for Federal Home Loan Banks (FHLBs)

We thank FHFA for undertaking its “FHLB at 100” effort to comprehensively assess potential improvements and reforms for the FHLB system. While we filed separate comments in that docket, addressing a number of issues such as governance and tracking of advancing, we also wish to highlight here several recommendations regarding EHFP requirements and fair lending and fair housing requirements for the FHLBs. These recommendations draw from existing statutory authority, including the AFFH requirement of the Fair Housing Act, FHFA fair lending oversight responsibilities, and the Community Support Program (CSP) and Affordable Housing Program (AHP) statutory requirements for the FHLBs.

The Banks and their members should be evaluated in regard to their fair housing and fair lending performance, including the extent to which they are taking effective and systematic measures to AFFH. In keeping with the AFFH duty, both the AHP and banks’ other uses of advances should include deliberate and meaningful steps to fund programs designed to address the racial homeownership divide (including through Special Purpose Credit Programs (SPCPs) and through first generation-targeted programs).

As with the GSEs, FHLB requirements should ensure that multifamily properties meet high standards for fair housing. Fair housing considerations include siting in highly resourced areas in alignment with HUD’s AFFH obligation, as well as tenant marketing and selection criteria (for example, avoiding discrimination on the basis of criminal records and source of income including housing vouchers) and eviction protections (given the disparate rate of evictions among households of color). For example, financing of LIHTC properties and HOME properties should aim to promote fair housing, in keeping with the AFFH requirements of the Fair Housing Act and AFFH best practices. Moreover, member banks should be required to put in place due diligence procedures that screen for and prevent other practices that evidence shows have adverse racial impacts: for example, to avoid the financing of abusive or neglectful property owners and managers of multifamily or single-family rental properties. This full scope of fair housing protections should be included in the fair lending and fair housing oversight and examination process for the FHLBs.

FHLB members must meet statutory community support requirements and currently must, as per FHFA regulation, have in place Community Support Programs (CSP).[56] The CSP regulations require a Community Support Statement, which in its current form includes the bank's most recent CRA rating and data on mortgage loans made to first-time homebuyers.[57] Regulatory implementation of the CSP requirements can and should be strengthened to include rigorous and comprehensive fair housing requirements. SPCPs that focus on disadvantaged populations (including people of color) should be included as a component of the CSP framework. Banks should also be required to provide information regarding their fair lending oversight programs, fair housing oversight for multifamily properties, and steps to promote housing choice (including both broader access to opportunity and also housing stability in rising-cost areas) through siting priorities and tenant selection/marketing policies.

We also recommend that the Banks be subject to an EHFP requirement, applicable across their housing-related programs and their uses of advances. As with the GSEs, this requirement should include mandatory fair housing criteria, with the Banks required to identify and respond to significant fair housing barriers.

Thank you for your consideration of our recommendations on these important issues. We can be reached via Megan Haberle (Senior Director of Policy) at mhaberle@ncrc.org, Josh Silver (Senior Fellow) at jsilver97@gmail.com, or Nichole Nelson (Senior Policy Advisor) at nnelson@ncrc.org for further discussion.

Best regards,
Jesse Van Tol
President and CEO
National Community Reinvestment Coalition

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[1] Debra Kamin, "Home Appraised with a Black Owner: $472,000. With a White Owner: $750,000," *The New York Times*, August 18, 2022, https://www.nytimes.com/2022/08/18/realestate/housing-discrimination-maryland.html;

Troy McMullen, "For Black Homeowners, a Common Conundrum with Appraisals," *The Washington Post*, January 21, 2021, https://www.washingtonpost.com/realestate/for-black-homeowners-a-common-conundrum-with-appraisals/2021/01/20/80fbfb50-543c-11eb-a817-e5e7f8a406d6_story.html; and Lauren Hepler, "A Black Couple 'Erased Themselves' from Their Home to See if The Appraised Value Would Go Up. It did—by nearly $500,000," *San Francisco Chronicle*, December 3, 2021, https://www.sfchronicle.com/bayarea/article/Black-Marin-City-couple-sues-appraiser-for-16672840.php.
[2] McMullen, "For Black Homeowners, a Common Conundrum with Appraisals."
[3] Laurie S. Goodman and Christopher Mayer, "Homeownership and the American Dream," *Journal of Economic Perspectives*, 32, no. 1 (Winter 2018): 32, https://www.urban.org/sites/default/files/publication/96221/homeownership_and_the_american_dream_0.pdf and "Table 5. Mean Value of Assets for Households, by Type of Owned and Selected Characteristics: 2019," U.S. Census Bureau, Survey of Income and Program Participation, 2020, https://www.census.gov/data/tables/2019/demo/wealth/wealth-asset-ownership.html. Under "Wealth and Asset Ownership," click on the Microsoft Excel spreadsheet, "Wealth and Asset Ownership for Households, by Type of Asset and Selected Characteristics: 2019 [<1.0 MB]" and download it. The referenced data is from Table 5.
[4] Jake Lilien, "Faulty Foundations: Mystery-Shopper Testing in Home Appraisals Exposes Racial Bias Undermining Black Wealth," National Community Reinvestment Coalition, October 2022, https://ncrc.org/wp-content/uploads/2022/10/Faulty-Foundations-Mystery-Shopper-Testing-In-Home-Appraisals-v5.pdf.
[5] Ibid., 5.
[6] Ibid., 5, 9, and 11.
[7] Ibid., 4.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid., 4 and 11-12.
[12] Ibid.
[13] Freddie Mac, "Racial and Ethnic Valuation Gaps in Home Purchase Appraisals," September 2021, https://www.freddiemac.com/fmac-resources/research/pdf/202109-Note-Appraisal-Gap.pdf.
[14] Ibid., 3.
[15] Ibid.
[16] Ibid.
[17] Wonyoung So, "Which Information Matters? Measuring Landlord Assessment of Tenant Screening Reports," *Housing Policy Debate*, August 30, 2022, 5 and 18-19, https://doi.org/10.1080/10511482.2022.2113815; U.S. Department of Housing and Urban Development, "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions," April 4, 2016, 4-5, https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF; and National Housing Law Project, "Source of Income Discrimination," November 17, 2017, https://www.nhlp.org/resources/source-of-income-discrimination-2/.
[18] Anna Resoti, "'We Go Totally Subjective' : Discretion, Discrimination, and Tenant Screening in a Landlord's Market," *Law & Social Inquiry*, 45, no. 3, August 2020, 627, https://www.cambridge.org/core/journals/law-and-social-inquiry/article/we-go-totally-subjective-discretion-discrimination-and-tenant-screening-in-a-landlords-market/1AABF71AEA176ADA1F8D93E7C424C4D2/share/3f4060bf42159f964bbd50055a9db16a78f9789a#pf24.
[19] Ibid.
[20] U.S. Census Bureau, Table B25003B: Tenure (Black or African American Alone Householder), 2019: ACS 5-Year Estimates Detailed Tables, United States, https://data.census.gov/table?q=B25003B:+TENURE+(BLACK+OR+AFRICAN+AMERICAN+ALONE+HOUSEHOLDER)&tid=ACSDT5Y2019.B25003B.
[21] U.S. Census Bureau, Table B25003C: Tenure (American Indian and Alaska Native Alone), 2019, ACS 5-Year Estimates Detailed Tables, United States, https://data.census.gov/table?q=B25003C:+TENURE+(AMERICAN+INDIAN+AND+ALASKA+NATIVE+ALONE+HOUSEHOLDER)&tid=ACSDT5Y2019.B25003C.
[22] U.S. Census Bureau, Table B25003I: Tenure (Hispanic or Latino Householder), 2019, ACS 5-Year Estimates Detailed Tables, United States,

https://data.census.gov/table?q=B25003I:+TENURE+(HISPANIC+OR+LATINO+HOUSEHOLDER)&tid=ACSDT5Y2019.B25003I.

[23] U.S. Census Bureau, Table B25003D: Tenure (Asian Alone Householder), 2019, ACS 5-Year Estimates Detailed Tables, United States, https://data.census.gov/table?q=B25003D:+TENURE+(ASIAN+ALONE+HOUSEHOLDER)&tid=ACSDT5Y2019.B25003D.

[24] U.S. Census Bureau, Table 25003H: Tenure (White Alone, Not Hispanic or Latino Householder), 2019, ACS 5-Year Estimates Detailer Tables, United States, https://data.census.gov/table?q=B25003H:+TENURE+(WHITE+ALONE,+NOT+HISPANIC+OR+LATINO+HOUSEHOLDER)&tid=ACSDT5Y2019.B25003H.

[25] U.S. Department of Housing and Urban Development, "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records," April 4, 2016, 2.

[26] Ashley Nellis, "The Color of Justice: Racial and Ethnic Disparity in State Prisons," *The Sentencing Project*, 2021, 6, https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf.

[27] National Consumer Law Center, "Past Imperfect: How Credit Scores and Other Analytics 'Bake In' and Perpetuate Past Discrimination," May 2016, 1-2, https://www.nclc.org/wp-content/uploads/2022/09/Past_Imperfect.pdf.

[28] Ibid., 2 and Natalie Campisi, "From Inherent Racial Bias to Incorrect Data—The Problems With Current Credit Scoring Models," *Forbes Advisor*, February 26, 2021, https://www.forbes.com/advisor/credit-cards/from-inherent-racial-bias-to-incorrect-data-the-problems-with-current-credit-scoring-models/.

[29] National Consumer Law Center, "Past Imperfect," 2.

[30] Ibid.

[31] Ibid. 5 and Woodstock Institute, "Bridging the Gap: Credit Scores and Economic Opportunity in Illinois Communities of Color," September 2010, 4, https://woodstockinst.org/wp-content/uploads/2013/05/bridgingthegapcreditscores_sept2010_smithduda.pdf.

[32] Woodstock Institute, "Bridging the Gap," 4-5 and National Consumer Law Center, "Past Imperfect," 5.

[33] Ibid.

[34] National Consumer Law Center, "Past Imperfect," 5.

[35] Ibid. and Woodstock Institute, "Bridging the Gap," 4-5.

[36] National Consumer Law Center, "Past Imperfect," 6 and Raphael W. Bostic, Paul S. Calem, and Susan M. Wachter, "Hitting the Wall: Credit as an Impediment to Homeownership," Joint Center for Housing Studies, February 2004, 18, https://www.jchs.harvard.edu/sites/default/files/media/imp/babc_04-5.pdf.

[37] National Housing Law Project, "Source of Income Discrimination," and "Learn About the Protected Class of Source of Income," Fair Housing Council of Oregon, https://fhco.org/learn-about-the-protected-class-of-source-of-income/.

[38] U.S. Department of Housing and Urban Development, "Housing Choice Vouchers Fact Sheet," https://www.hud.gov/topics/housing_choice_voucher_program_section_8#hcv01; U.S. Department of Housing and Urban Development, Office of Inspector General, "Newark Landlords Agree to Pay $430,000 to Settle Allegations of Collecting Excess Rent in Sparrow Run," May 2, 2022, https://www.hudoig.gov/newsroom/press-release/newark-landlords-agree-pay-430000-settle-allegations-collecting-excess-rent; and Kayla Canne, "'We don't take that:' Why illegal discrimination toward Section 8 tenants goes unchecked in NJ," *Asbury Park Press*, October 25, 2021, https://www.app.com/in-depth/news/investigations/2021/10/26/section-8-nj-housing-choice-voucher-discrimination-law-new-jersey/5602044001/.

[39] Fannie Mae, "Housing Choice Voucher Program Explained," 2022, https://multifamily.fanniemae.com/media/15531/display.

[40] Federal Housing Finance Agency (FHFA), *Fair Lending, Fair Housing, and Equitable Housing Finance Plans*, Federal Register, Vol. 88, No. 80, April 26, 2023, 25294

[41] FHFA proposed rule, 25298

[42] Cornell Law School, Legal Information Institute, 12 U.S. Code § 1716 - Declaration of purposes of subchapter, https://www.law.cornell.edu/uscode/text/12/1716#:~:text=manage%20and%20liquidate%20federally%20owned,loss%20to%20the%20Federal%20Government.

[43] FHFA proposed rule, 25296

[44] Ibid., 25300

[45] Ibid., 25303

[46] Ibid., 25304

[47] Patrick Boxall and Josh Silver, Performance of the GSEs at the Metropolitan Level, in Cityscape: A Journal of Policy Development and Research, pp. 145-217, Volume 5, Number 3, Office of Policy Development and Research, Department of Housing and Urban Development, https://www.huduser.gov/Periodicals/CITYSCPE/VOL5NUM3/boxall.pdf

[48] Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Notice of Proposed Rulemaking (NPR) to amend the CRA regulations, May 5, 2022, issued version, https://www.federalreserve.gov/consumerscommunities/files/cra-npr-fr-notice-20220505.pdf

[49] FHFA proposed rule, 25304

[50] NPR to amend the CRA regulations, 131-133.

[51] Ibid., 25303

[52] Ibid., 25302

[53] For a description of census regions and divisions, https://en.wikipedia.org/wiki/United_States_Census_Bureau#Census_regions_and_divisions

[54] FHFA proposed rule, 25303

[55] Ibid., 25303

[56] 12 CFR § 1290.6; see also FHFA Form 060, available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Documents/Informational-CSS-Form60.pdf.

[57] FHFA template for community support statement, https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Documents/Informational-CSS-Form60.pdf