

June 26, 2023

Director Sandra L. Thompson
Federal Housing Finance Agency
Constitution Center
400 Seventh Street, SW
Washington, DC 20219

Re: Fair Lending, Fair Housing, and Equitable Housing Finance Plans

Dear Director Thompson:

The National Fair Housing Alliance® (NFHA™)¹ and the undersigned civil rights, housing, and other advocacy organizations appreciate the opportunity to comment on the Federal Housing Finance Agency's (FHFA) Notice of Proposed Rulemaking (NPRM or Proposed Rule) regarding Fair Housing, Fair Lending, and Equitable Housing Finance Plans.² We commend FHFA for seeking input on this important topic and we hope that our comments below will help inform FHFA's views.

Executive Summary

Supervision. We strongly support FHFA's Proposed Rule with respect to codifying FHFA's existing oversight functions for fair housing and fair lending laws and Section 5 of the Federal Trade Commission Act. The proposed rule is consistent with law, policy, and the longstanding practices of other federal regulators. To ensure efficient and effective supervision of these complex entities, we recommend that FHFA significantly increase staffing, including lawyers, economists, and analysts. Finally, to further clarify FHFA's supervision and enforcement authority, we recommend amending the regulations to:

- Ensure consistency in the supervision and enforcement authority for the Division of Housing, Mission, and Goals, and the Division of Enterprise Regulation (for safety and soundness);
- Include reports regarding unfair or deceptive acts or practices; and
- Recognize FHFA's authority to require certifications for special as well as regular reports.

Equitable Housing Finance Plans. We also support the Proposed Rule's codification of FHFA's requirement for the GSEs to create and implement Equitable Housing Finance Plans.

¹ The National Fair Housing Alliance® ("NFHA™") leads the fair housing movement. NFHA works to eliminate housing discrimination and ensure equitable housing opportunities for all people and communities through its education and outreach, member services, public policy, advocacy, housing and community development, tech equity, enforcement, and consulting and compliance programs.

² FHFA, *Notice of Proposed Rulemaking regarding Fair Housing, Fair Lending, and Equitable Housing Finance Plans*, 88 Fed. Reg. 25293 (April 26 2023), <https://www.govinfo.gov/content/pkg/FR-2023-04-26/pdf/2023-08602.pdf>.

Implemented effectively, these plans can be important tools to enable the GSEs to improve their historically weak record of serving communities of color and other underserved communities, an outcome that is consistent with their charter obligations, their obligations to further fair housing, and that will also promote safety and soundness. The proposed regulation will also help FHFA fulfill its obligations under the federal Fair Housing Act to affirmatively further fair housing. The proposed regulation would be strengthened by enhanced transparency, greater accountability measures and improved public engagement requirements.

Data Collection and Reporting. We support formalizing the requirement that Fannie Mae and Freddie Mac (collectively, the Government-Sponsored Enterprises or GSEs) collect information on borrower language preference. In addition, we recommend requiring the GSEs to implement policies requiring all GSE counterparties to provide meaningful language access to Limited English Proficiency (LEP) borrowers, including use of translated documents in the FHFA Mortgage Translations Clearinghouse and development of robust language access plans.

Federal Home Loan Banks (FHLBanks). We believe that the FHLBanks receive tremendous public subsidies and private benefits while providing comparatively little in return to the public's interest. For that reason, we urge FHFA to ensure the FHLBanks do more to promote fair and affordable housing. We refer FHFA to the comprehensive [comment letter](#) submitted by NFHA and allied organizations for more specific details.

Detailed Comments

FHFA Fair Lending Oversight of the Regulated Entities

Consistent with FHFA's statutory authority and standard regulatory practice, the proposed rule would codify in regulation FHFA's existing fair lending oversight functions with respect to the regulated entities, including conducting supervisory examinations, issuing examination findings, requiring regular and special reporting and data, and enforcement.

Fair Lending Laws and the Federal Trade Commission Act

We support FHFA's proposal to define "fair housing and fair lending laws" as the Fair Housing Act³ and the Equal Credit Opportunity Act (ECOA)⁴ and the implementing regulations (Proposed § 1293.2). This approach is consistent with the practice of the federal financial regulators: the Consumer Financial Protection Bureau (CFPB), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA).⁵ In addition, with respect to the Enterprises, the definition appropriately includes the Federal Housing Enterprises Financial Safety and Soundness Act (Safety and Soundness Act) and implementing regulations.⁶

We further support FHFA's proposal to ensure that the GSEs and the FHLBanks comply with Section 5 of the Federal Trade Commission (FTC) Act, which prohibits unfair or deceptive acts or practices (also known as UDAP) (Proposed § 1293.11(b)).⁷ Ensuring that FHFA-regulated entities comply with Section 5 of the FTC Act is consistent with FHFA's statutory authority as a federal financial regulator to supervise regulated entities for compliance with federal laws and regulations, including applicable consumer protection laws.⁸ Moreover, this approach is consistent with the practice of other federal financial regulators who use similar statutory authority (under the Federal Deposit Insurance Act, 12 U.S.C. § 1818) to oversee regulated entities for compliance with the FTC Act.⁹ Finally, adding federal consumer protection laws to FHFA's fair housing and fair lending oversight programs will aid in the agency's mission to improve equity in the market for conventional mortgage credit, support overall regulated entity safety and soundness, and serve the public interest.

³ 42 U.S.C. § 3601 *et seq.*; implementing regulations: 24 C.F.R. Part 100.

⁴ 15 U.S.C. § 1691 *et seq.*; implementing regulations: 12 C.F.R. Part 1002.

⁵ See, e.g., FFIEC, *Interagency Fair Lending Examination Procedures* (2009), <https://www.ffiec.gov/pdf/fairlend.pdf>.

⁶ 12 U.S.C. § 4545; implementing regulations: 12 C.F.R. Part 81.

⁷ 12 U.S.C. 45.

⁸ 12 U.S.C. § 4511(b)(2).

⁹ See, Board of Governors of the Federal Reserve System ("Federal Reserve") and Federal Deposit Insurance Corporation ("FDIC") *Unfair or Deceptive Acts or Practices by State-Chartered Banks*, Federal Reserve CA 04-2, FDIC FIL-26-2004 (March 11, 2004), <https://www.federalreserve.gov/boarddocs/caletters/2004/0402/CA04-2Attach.pdf>

Compliance and Enforcement

We support FHFA's proposal to codify in regulation FHFA's existing authority to supervise for and enforce compliance with the fair housing and fair lending laws and the FTC Act (Proposed §1293.3). We view this as a prudent "belt-and-suspenders" approach as FHFA already has existing supervision and enforcement authority with respect to these laws even without this regulation. The Safety and Soundness Act empowers FHFA to oversee its regulated entities' compliance with "other applicable law"¹⁰ and to engage in enforcement for noncompliance with law.¹¹ Moreover, this approach is consistent with the practice of the other federal financial regulators with respect to the exercise of their supervision and enforcement authority for compliance with the fair lending laws and the FTC Act.

To further clarify FHFA's supervision and enforcement authority, we recommend that FHFA amend the regulations for the Division of Housing, Mission, and Goals to show consistency with the supervision and enforcement authority for the Division of Enterprise Regulation (for safety and soundness). We recommend amending the regulation as follows (new language in bold font):

12 C.F.R. § 1200.2(c) *Deputy Director of the Division of Housing, Mission, and Goals*. The Deputy Director is responsible for FHFA policy development and analysis, oversight of housing and regulatory policy, and oversight of the mission and goals of the Enterprises **and for managing FHFA's program of compliance supervision and enforcement**. The Deputy Director oversees and coordinates FHFA activities regarding data analysis, market surveillance, policy development, policy research and analysis affecting housing finance and financial markets, and policy analysis and research in support of FHFA's mission and the Director's responsibilities as a member of the Federal Housing Finance Oversight board, the Financial Stability Oversight Board, and the Financial Stability Oversight Council. **The Deputy Director provides management oversight, direction, and support for all compliance examination activity involving the Enterprises, the development of supervision findings, preparation of the annual reports of examination, and the development of enforcement actions. The Deputy Director provides support and advice to the Director and other senior executives and represents the division on significant and emerging compliance supervision issues and development of FHFA compliance supervision policy,** and has such other responsibilities as the Director may prescribe.

12 C.F.R. § 1200.2(e)(3) *Division of Housing, Mission, and Goals*. The division supports and implements the responsibilities of the Deputy Director described in [paragraph \(c\)](#) of this section. In support of FHFA's mission and the Director's responsibilities as a member of the Federal Housing Finance Oversight Board, the Financial Stability Oversight Board, and the Financial Stability Oversight Committee, the division also oversees and coordinates FHFA

¹⁰ 12 U.S.C. § 4511(b)(2).

¹¹ 12 U.S.C. § 4631.

activities that involve certain data analysis, and analysis affecting housing finance and financial markets. **The division oversees and directs all Enterprise compliance supervision and enforcement activities, develops examination findings, prepares reports of examination, and prepares the sections of the Annual Report to Congress that describe the condition and performance of each Enterprise with respect to compliance with applicable law. By means of annual examinations and a continuous on-site presence, the division monitors and assesses the amount of compliance risk each Enterprise assumes, the quality of risk management, and compliance with laws and regulations, including fair housing and fair lending laws and Section 5 of the Federal Trade Commission Act.**

This approach is consistent with the practice of the other federal prudential regulators who provide organizational authority and resources for safety and soundness supervision as well as consumer compliance supervision.¹²

Oversight by the Board of Directors

We support FHFA's proposal to codify in regulation FHFA's existing authority to require the boards of directors of the GSEs and the FHLBanks to direct the operations in compliance with the fair housing and fair lending laws and the FTC Act (Proposed §1293.11). Board oversight is fundamental to a robust Compliance Management System and consistent with the longstanding practice of the other federal financial regulators. As early as 2009, the federal financial regulators (through the Federal Financial Institutions Examination Council or "FFIEC") issued fair lending examination procedures that required examiners' to thoroughly review management oversight to evaluate the potential for discriminatory conduct at the institution.¹³ In 2016, the federal financial regulators (through the FFIEC) issued the Uniform Interagency Consumer Compliance Rating System, which named "Board and Senior Management Oversight" as one of the three categories critical to the evaluation of the institution and its consumer compliance rating.¹⁴

Reports

We support FHFA's proposal to codify in regulation FHFA's existing authority to require the GSEs and the FHLBanks to submit to FHFA regular and special reports concerning fair housing and fair lending, including the provision of data pursuant to FHFA instructions (Proposed §1293.12(a)). This proposal is consistent with FHFA's statutory authority as the Safety and Soundness Act explicitly states that the FHFA Director may require the regulated entities to

¹² For example, the Board of Governors of the Federal Reserve maintains both a Division of Supervision and Regulation for safety and soundness supervision and a Division of Consumer and Community Affairs for consumer compliance supervision. See Federal Reserve website: <https://www.federalreserve.gov/>.

¹³ FFIEC, *Interagency Fair Lending Examination Procedures (2009)*, <https://www.ffiec.gov/pdf/fairlend.pdf>.

¹⁴ FFIEC, *Uniform Interagency Consumer Compliance Rating System*, 81 Fed. Reg. 79473 (Nov. 14, 2016), <https://www.ffiec.gov/press/pr110716.htm>.

submit regular or special reports.¹⁵ In addition, to further clarify the extent of this reporting authority, we recommend amending the regulation to include reports regarding unfair or deceptive acts or practices.

GSE Certifications

We support FHFA's proposal to require by regulation that the GSEs and the FHLBanks include a certification of the regulated entity's compliance with fair housing and fair lending laws and Section 5 of the FTC Act with each regular report concerning fair housing and fair lending. This proposal is consistent with FHFA's statutory authority as the Safety and Soundness Act explicitly states that each regular and special report "shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the board of directors of the regulated entity to make sure declaration, that the report is true and correct to the best of such officer's knowledge and belief."¹⁶ This approach is also consistent with the U.S. Department of Housing and Urban Development's (HUD) requirements for grantees,¹⁷ HUD's requirements under the Affirmatively Furthering Fair Housing (AFFH) proposed rule,¹⁸ the U.S. Department of the Treasury's requirements for states receiving funding under the Homeowner Assistance Fund (HAF) authorized by the American Rescue Plan Act,¹⁹ and the GSEs' requirements for seller/servicers.²⁰ This certification requirement would provide additional incentives to the boards and management of the regulated entities to ensure compliance with fair housing and fair lending laws and Section 5 of the FTC Act in their operations.

To further clarify the extent of this certification, we recommend amending the regulation as follows (recommended changes in bold font):

12 C.F.R. § 1293.12(b) *Certifications*. Each regular **and special** report concerning fair housing and fair lending **or unfair or deceptive acts or practices** shall include a certification of the regulated entity's compliance with fair housing and fair lending laws and with **§ 1293.11(b) the prohibition on unfair or deceptive acts or practices under 15 U.S.C. 45** in

¹⁵ 12 U.S.C. § 4514.

¹⁶ 12 U.S.C. § 4514(a)(4).

¹⁷ See HUD, *Interim Final Rule: Restoring Affirmatively Further Fair Housing Definitions and Certifications*, 86 Fed. Reg. 30779, 30781 (June 6, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-06-10/pdf/2021-12114.pdf> (citing the relevant statutes that require HUD's grantees to certify that they will affirmatively further fair housing).

¹⁸ See *id.*

¹⁹ See U.S. Department of the Treasury, *Homeowner Assistance Fund: Financial Assistance Agreement*, OMB Approval No. 1505-0259, Paragraph 7, https://home.treasury.gov/system/files/136/HAF-Financial-Assist-Agmt_0.pdf.

²⁰ See Fannie Mae, *Single Family Selling Guide*, Section A3-02-01, Compliance with Laws (April 5, 2023) <https://selling-guide.fanniemae.com/Selling-Guide/Doing-Business-with-Fannie-Mae/Subpart-A3-Getting-Started-with-Fannie-Mae/Chapter-A3-2-Compliance-with-Requirements-and-Laws/1645975681/A3-2-01-Compliance-With-Laws-07-06-2022.htm>; Freddie Mac, *Single Family Seller Servicer Guide*, Section 1301.2, Compliance with Applicable Law (March 1, 2023), <https://guide.freddie.com/app/guide/section/1301.2>.

addition to any other required certification or declaration (such as a declaration under 12 U.S.C. 4514(a)(4)).

This approach would recognize FHFA's authority to require certifications for special as well as regular reports. This would also require certifications for such reports that pertain to potential unfair or deceptive acts or practices. Finally, the recommended language would clarify that the regulated entity must certify compliance with Section 5 of the FTC Act (rather than with the regulation).

Comments Specifically Requested

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

FHFA has shown tremendous leadership in establishing robust fair lending oversight of the GSEs. To further facilitate this approach, FHFA should significantly increase staffing - including lawyers, economists, and analysts - to ensure efficient and effective supervision of these large and complex regulated entities.

4. Are there any benefits or other issues FHFA should be aware of in considering adding unfair or deceptive acts or practices to its compliance and enforcement for regulated entities?

We recommend hiring additional personnel with specific expertise in UDAP law. While the UDAP framework is often similar to the fair lending analysis, there are important differences that require specific expertise.

Enterprise Equitable Housing Finance Plans

We support FHFA's proposal to establish in regulation (Subpart C) the requirement for the GSEs to create and implement Equitable Housing Finance Plans (Equity Plans). Such Equity Plans are a critical tool by which FHFA can fulfill its obligation under the federal Fair Housing Act²¹ to administer its programs and activities in a manner affirmatively to further fair housing (AFFH). Similarly, these Equity Plans will assist the GSEs in their efforts to fulfill their charter obligations to provide liquidity to the entire mortgage market, including underserved communities.

In 2011, 2.6% of Fannie Mae's home purchase loans and 1.5% of Freddie Mac's were from Black borrowers.²² By 2019, those figures had increased only slightly: 4.8% of Fannie Mae and 3.6% of

²¹ 42 U.S.C §3608(d) requires that, "All executive departments and agencies shall administer their programs and activities relating to housing and urban development (**including any Federal agency having regulatory or supervisory authority over financial institutions**) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes." (emphasis added).

²² See FHFA, *Annual Housing Report*, Appendix B, Table B-2 (October 2012), https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2012-10_AnnualHousing_508.pdf.

Freddie Mac home purchase loans were from Black borrowers.²³ In 2021, the most recent year for which data is publicly available, the picture was much the same: Fannie Mae's share of loans purchased from Black borrowers dropped slightly, to 4.7% and Freddie Mac's increased to 4.0%.²⁴ In all three years, the GSEs' purchases of loans from Hispanic or Latino borrowers were somewhat higher, but still very low. Thus, while there has been some improvement in the GSEs' performance in serving these underserved communities, much more is needed. None of the statutory mechanisms currently in place, neither the affordable housing goals or the duty to serve requirements, are working to ensure the GSEs meet the needs of communities of color and other underserved communities. For FHFA to carry out its AFFH mandate, it is incumbent upon the agency to adopt a different, more strategic approach. Implemented effectively, the proposed Equitable Housing Finance Plan regulation has the potential to achieve the results needed to ensure not only equitable access to the mortgage market, but also the viability of that market in the future, when the majority of new homebuyers will be households of color.²⁵ Thus, this proposed regulation will advance both FHFA's fair housing and safety and soundness goals.

Comments Specifically Requested

7. Is the three-year timeline for the plans adopted by the Enterprises appropriate?

Three years is a reasonable timeline for the Enterprises' Equitable Housing Finance Plans. Anything shorter may not provide sufficient time for the GSEs to both develop and implement initiatives under their goals and gain sufficient experience to determine their impacts. A timeline longer than three years may signal a lack of urgency about the changes that are needed in the marketplace.

8. Should FHFA issue an evaluation of the Enterprises? Should the rule include required evaluation metrics for the progress reports?

We recommend that FHFA issue a public evaluation of the GSEs' efforts and outcomes under their Equity Plans, including rating the GSEs' performance on a five-point scale. That would be similar to the rating system used by the prudential regulators under the Community Reinvestment Act, but would provide an additional rating category that allows for greater differentiation between levels of performance. The evaluation should describe FHFA's assessment of how well each GSE performed using metrics and benchmarks in the plans

²³ See FHFA, *Annual Housing Report* at 11, Table 6 (October 2020), <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Annual-Housing-Report-2020.pdf>.

²⁴ See FHFA, *Annual Housing Report* at 11, Table 6 (October 2022), <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Annual-Housing-Report-2022.pdf>.

²⁵ According to research from the Urban Institute, between 2020 and 2040, net household growth and net new homeowners will all be non-White. See Laurie Goodman and Jun Zhu, *The Future of Headship and Homeownership*, Urban Institute (Jan. 2021) <https://www.urban.org/sites/default/files/publication/103501/the-future-of-headship-and-homeownershi p.pdf>.

themselves, and should indicate not only how well each GSE performed on each objective overall, but also how well it performed on each of the meaningful actions and high-impact activity that was included in the plan. This degree of granularity will give the public a better understanding of how FHFA arrived at its final evaluation. Such transparency is an important accountability mechanism for the GSEs and FHFA itself, and is fundamental to achieving public confidence in the Equitable Housing Finance Plan process.

9. Should the rule include required or optional priority goals? If so, who should determine which priority goals are applicable?

All goals should be developed based on input from stakeholders, research and other information about key barriers faced by underserved communities and strategies for overcoming them with a focus on carrying out the GSEs' important public missions. Care should be taken to avoid enshrining particular goals in regulation as that may make it difficult to respond to changes in the market in a timely fashion. Decisions about which goals should receive priority can be made jointly by the GSEs and FHFA, incorporating input from stakeholders.

10. From year to year, what should be the scope of updates to the Equitable Housing Finance Plans?

The scope of updates to the Equity Plans enumerated in the proposed regulation is adequate.

11. Should the focus of an Equitable Housing Finance Plan be limited to one underserved community at a time?

No, the focus of an Equitable Housing Finance Plan should not be limited to one underserved community at a time. The GSEs are large corporations with important public missions of ensuring broad liquidity in all markets at all times. They have significant resources at their disposal and the capacity to handle numerous complex tasks simultaneously. The appropriate number of points of focus for an Equity Plan may change over time, as may the types of objectives established and meaningful actions proposed. FHFA should set high expectations for the GSEs' efforts to overcome barriers to equitable access to the mortgage market, given how critical this is to their missions and the long-term health and viability of that market, but should preserve flexibility with respect to the number and type of goals the GSEs may establish in any given Equity Plan.

12. Does the rule provide for sufficient public engagement?

The proposed rule sets out two types of public engagement in the Equity Plan process in §1293.24. Section 1293.24(a) provides that FHFA will conduct public engagement annually to allow the public to provide input into the development and implementation of the Plans. Section 1293.24(b) sets out the requirement for the Enterprises to consult with stakeholders on those

same matters. While these are useful provisions, they could be strengthened in a number of respects, as we discuss below.

Establish Timelines and Expectations for Public Engagement

In the case of both the GSEs and FHFA itself, efforts to engage the public around the Equitable Housing Finance Plans would be more effective if the rule established certainty about the timing for public engagement or input, so that stakeholders can plan accordingly. With respect to public engagement conducted by FHFA, the proposed rule should provide a timeline for stakeholder input that is based on the schedule by which the GSEs must submit their proposed plans and any updates to the agency, and should establish that the public will have access to the proposed plans a reasonable amount of time - such as 60 days - in advance of any commenting deadline.

At the GSE level, a stakeholder engagement process whose timing and participants are determined solely by the GSEs may exclude interested parties who are not aware that the engagement process is underway. The proposed rule should address both of these concerns by setting out a timeframe within which the public should have opportunities to provide input into and feedback on the proposed plans, and by setting expectations that the GSEs must engage with a wide range of stakeholders, including organizations that have a track record of serving the needs of underserved communities, and groups with a track record of advocating for the interests of underserved groups. To accomplish this, the proposed rule should require the GSEs to use a variety of outreach mechanisms, including notices on their websites, announcements on their social media channels and other means as appropriate.

With respect to methods for public engagement, we encourage FHFA to expand engagement methods beyond the typical listening session. While the virtual element of recent listening sessions, which eliminates the need for travel in order to attend, may enable a wider set of stakeholders to participate, and therefore should be preserved, the listening session approach also imposes significant constraints on the information and perspectives that stakeholders can share. Nor does it allow for engagement and discussion among stakeholders or between stakeholders and FHFA itself. More in-depth discussion might be possible in a different setting, such as a roundtable discussion or forum, or in smaller, targeted focus groups. The regulation should encourage FHFA - and the GSEs - to explore a range of methods for engaging the public that will both engage a range of stakeholders and allow for more in-depth discussion of key issues.

Further, meaningful public engagement, whether conducted by the GSEs or FHFA, is most effective when members of the public have access to relevant information in advance, so that their input is informed and can focus on pertinent points. For this purpose, advance publication of the Equity Plans, annual progress reports and FHFA performance evaluations is critical. The

GSEs should also partner with non-governmental organizations (NGOs) with established track records of community engagement.

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

We support FHFA's suggestion of establishing a special purpose credit program pursuant to Federal law. Section 1002.8(a)(1) of Regulation B permits a creditor to extend special purpose credit to applicants who meet eligibility requirements under "[a]ny credit assistance program expressly authorized by Federal or state law for the benefit of an economically disadvantaged class of persons."²⁶ The Official Staff Commentary further explains that "[a] creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by a government agency implementing a special purposes credit program under §1002.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with Federal and state law."²⁷ Finally, the Commentary states that "[c]redit programs authorized by Federal or state law include programs offered pursuant to Federal, state, or local statute, regulation or ordinance, or pursuant to judicial or administrative order."²⁸ FHFA's development of a special purpose credit program under this section of Regulation B would be consistent with ECOA and Regulation B, can have a significant impact on closing the racial homeownership and wealth gaps that have long plagued the housing market, can further the purpose of the federal Fair Housing Act, and can help the GSEs fulfill their obligation to affirmatively further fair housing. Among other things, we recommend that FHFA promote a program for first generation down payment assistance.²⁹

14. Are the minimum requirements for performance reports sufficient or should performance reports contain any additional information not included in the rule?

Section 1293.23 of the proposed regulation describes the required contents for each GSE's annual performance report, including, among other things, the required data on loan purchases made pursuant to the Plan. The categories of data specified, however, may be too general in some cases. For example, they do not include information on loans purchased under specific programs that may be established, such as Special Purpose Credit Programs, small dollar

²⁶ 12 C.F.R. § 1002.8(a)(1).

²⁷ Comment 8(a)-2.

²⁸ Comment 8(a)-3.

²⁹ NFHA and Center for Responsible Lending, *First Generation: Criteria for a Targeted Down Payment Assistance Program* (May 21, 2021), <https://nationalfairhousing.org/wp-content/uploads/2021/06/crl-nfha-first-generation-jun21.pdf>.

mortgage programs or first generation down payment assistance programs,³⁰ all of which are innovations that we have recommended as tools to help close the racial homeownership gap in our country. Nor would they capture loans purchased that involved community land trusts or shared equity programs, or purchases of loans on multi-family properties that may advance efforts to affirmatively further fair housing. The specific reporting requirements for each plan should be tied to the goals, objectives and meaningful actions proposed in the plan so that the public, along with FHFA and the Enterprises themselves, can assess how successful those have been.

Enterprise Data Collection and Reporting to FHFA

We support formalizing the requirement that the GSEs collect information on borrower language preference (Proposed § 1293.31). Collecting and maintaining information on borrower language preference through the life of the loan is a necessary first step to providing effective language access. Collecting this information not only enables the GSEs to study loan performance across different borrower language groups, but it also allows lenders and servicers to direct in-language resources to the consumers that need them, and thoughtfully expand in-language resources as language needs across a provider's service population change.

While collecting information is an important first step, there is much to be done to ensure that borrowers with Limited English Proficiency (LEP) have meaningful access to our mortgage market. While FHFA and the GSEs have spent years developing in-language resources for lenders and servicers, English-only communication between lenders, servicers, and borrowers is still the industry norm. We recommend requiring the GSEs to implement policies requiring all GSE counterparties to provide meaningful language access to LEP borrowers, including use of translated documents in the FHFA Mortgage Translations Clearinghouse. Finally, FHFA should require regulated entities to create, and regularly maintain, language access plans.

General Issues

Federal Home Loan Banks

15. Should the Banks be required to comply with a framework similar to that of the Equitable Housing Finance Plans by regulation?

16. What elements of the framework should be included, modified, or excluded if FHFA were to apply such a framework to the Banks by regulation?

³⁰ For more on first generation down payment assistance programs, see *id.* For more information on how support for first generation down payment assistance programs could enhance the GSEs' affordable housing programs, see NFHA and Center for Responsible Lending, *Adding Eligibility for First-Generation Homebuyers to the GSE Affordable Housing Programs* (April 11, 2022), <https://nationalfairhousing.org/wp-content/uploads/2022/04/First-Generation-for-GSE-Affordable-Programs-4-11.pdf>.

17. Are there other ways to incorporate principles of equitable housing for the Banks that would meet the same objective?

We applaud FHFA for undertaking a robust review of the FHLBanks and for posing thoughtful questions as part of this NPRM. Generally, we believe that the FHLBanks receive tremendous public subsidies and private benefits while providing comparatively little in return to the public's interest. For that reason, we urge FHFA to ensure the FHLBanks do more to promote fair and affordable housing. We refer FHFA to the comprehensive comment letter submitted by NFHA and allied organizations for more specific details.³¹

Thank you for considering our views.

Sincerely,

National Fair Housing Alliance
Americans for Financial Reform Education Fund
Asian Real Estate Association of America
Center for American Progress
Center for Community Progress
Compass Working Capital
Consumer Action
Disability Rights Advocates
Grounded Solutions Network
Leadership Conference on Civil and Human Rights
Lincoln Institute of Land Policy
Mountain State Justice
NAACP
National Association of Real Estate Brokers, Inc.
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Consumer Law Center (on behalf of its low-income clients)
National Urban League
PolicyLink
Prosperity Now
UnidosUS

³¹ NFHA Press Release, *The National Fair Housing Alliance and Advocates Urge the Federal Housing Finance Agency to Ensure the Federal Home Loans Banks Do More to Promote Fair and Affordable Housing* (Nov. 1, 2022), <https://nationalfairhousing.org/the-national-fair-housing-alliance-and-advocates-urge-the-federal-housing-finance-agency-to-ensure-the-federal-home-loan-banks-do-more-to-promote-fair-and-affordable-housing/>.