to comply with publication requirements under 1 CFR chapter I.

III. Congressional Review Act

This RG is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

IV. Backfitting, Forward Fitting, and Issue Finality

Issuance of RG 5.87, Revision 1 does not constitute backfitting as defined in 10 CFR 72.62, ''Backfitting''; 10 CFR 70.76, ''Backfitting''; 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests'' (ADAMS Accession No. ML18093B087). Also, issuance of RG 5.87, Revision 1 does not constitute forward fitting as that term is defined and described in MD 8.4; and does not affect the issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Powerplants.''

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: May 13, 2024.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1293

RIN 2590–AB29

Fair Lending, Fair Housing, and Equitable Housing Finance Plans

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA or the Agency) is issuing this final rule that addresses barriers to sustainable housing opportunities for underserved communities by codifying existing FHFA practices in regulation and adding new requirements related to fair lending, fair housing, unfair or deceptive acts or practices, and Equitable Housing Finance Plans. The final rule furthers FHFA's fulfillment of its statutory purposes and its oversight of the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (Banks) (Fannie Mae and Freddie Mac collectively, the Enterprises; the Enterprises and the Banks collectively, the regulated entities), and their fulfillment of their statutory purposes.

DATES: This rule is effective on July 15, 2024, except for subpart D to part 1293 (amendatory instruction 2), which will become effective on February 15, 2026.

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I. Introduction

Federal agency oversight of fair housing, fair lending, and other relevant laws, as well as strategic planning to address barriers faced by renters and borrowers, are important in promoting sustainable housing opportunities [1] for underserved communities.[2] The final rule addresses barriers to sustainable housing opportunities for underserved communities by codifying existing FHFA practices in regulation and adding new requirements. Collectively, the actions in the final rule will improve FHFA's fulfillment of its statutory purposes and its oversight of the regulated entities and their fulfillment of their statutory purposes.

The final rule codifies in regulation much of FHFA's existing practices and programs regarding fair housing and fair lending oversight of its regulated entities, the Equitable Housing Finance Plan program for the Enterprises, and requirements for the Enterprises to collect and report language preference, homeownership education, and housing counseling information. The final rule makes changes to the Equitable Housing Finance Plan program to promote greater accountability for the Enterprises and public transparency, adds oversight of unfair or deceptive acts or practices to FHFA's fair housing and fair lending oversight programs, requires additional certification of compliance by the regulated entities, and establishes more precise standards related to fair housing, fair lending, and principles of equitable housing for regulated entity boards of directors (boards). The final rule also establishes a requirement for the Banks

[1] Sustainable housing opportunity is defined more completely later in the final rule, but generally encompasses rental or homeownership opportunities that include one or more characteristics important to the needs of a tenant or homeowner.

[2] Underserved community is defined more completely later in the final rule, but generally encompasses 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's or area's participation in the housing market, historically has received or currently receives a lower share of the benefits of Enterprise programs and activities providing sustainable housing opportunities, or that otherwise has had difficulty accessing these benefits compared with groups of people without the shared characteristic or other areas.

to report annually on any actions they voluntarily take to address barriers to sustainable housing opportunity for underserved communities in order to provide public transparency but does not require the Banks to undertake such actions or engage in the planning process required of the Enterprises.

A. Background

FHFA, the Regulated Entities, and their Public Purposes. Fannie Mae and Freddie Mac are federally chartered housing finance enterprises whose purposes include: providing stability to the secondary market for residential mortgages; providing ongoing assistance to the secondary market for residential mortgages (including activities related to mortgages for low- and moderate-income families) by increasing the liquidity of mortgage investments and improving distribution of investment capital available for residential mortgage financing; and promoting access to mortgage credit throughout the United States, 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.[3]

The Federal Home Loan Bank System (the System) provides a stable and reliable source of liquidity for its members and provides support for affordable housing and community development for the communities they serve. It was established in 1932 by the Federal Home Loan Bank Act (Bank Act),[4] and today consists of 11 regional Banks and the System's fiscal agent, the Office of Finance. Each Bank is a separate, government-chartered, member-owned corporation.

Congress established FHFA to oversee the regulated entities to ensure that the purposes of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended, the authorizing statutes, and any other applicable laws are carried out.[5] In doing so, Congress recognized that the regulated entities have important public purposes reflected in their authorizing statutes, and that they must be managed safely and soundly so that they continue to accomplish their public missions.[6]

With respect to the statutory mission of the Enterprises, a number of statutory and regulatory authorities that apply to FHFA and the Enterprises speak to the need to promote sustainable housing opportunities for all homebuyers, homeowners, and tenants in the housing market.[7] FHFA's principal duties include ensuring that the Enterprises operate consistent with safety and soundness and with the public interest.[8] FHFA and the Enterprises also have statutory duties and other commitments to advance equitable solutions for borrowers and tenants in the housing market. The Enterprises' authorizing statutes, for example, provide that one of their purposes is to promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas).[9] The authorizing statutes require the Enterprises, as part of their annual housing reports, to assess their underwriting standards, policies, and business practices that affect low- and moderate-income families or cause racial disparities, along with any revisions to these standards, policies, or practices that promote affordable housing or fair lending.[10]

The Housing Goals and Duty to Serve requirements [11] are important components for ensuring that the Enterprises fulfill their statutory mission and charters and serve low- and moderate-income families and underserved markets.[12] The Safety and Soundness Act provides that, in meeting these requirements, the Enterprises are required to take affirmative steps to assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families.[13] The Safety and Soundness Act also requires the Enterprises to transfer an amount equal to 4.2 basis points for each dollar of unpaid principal balance of new purchases to the U.S. Department of Housing and Urban Development's (HUD) administration of the Housing Trust Fund and the U.S. Department of the Treasury's administration of the Capital Magnet Fund.[14] Both funds are designed to support affordable housing initiatives by providing capital for the production or preservation of affordable housing and related economic development activities. For the 2023 year, the Enterprises transferred $301 million into the funds.[15]

Several provisions of the Bank Act denote the statutory missions of the Banks, including their role in making secured long-term advances to members to support residential housing finance, specific community support requirements, establishment of community investment programs and affordable housing programs, compliance with housing goals, and the requirement that certain board directors have experience in public interest areas.[16] FHFA launched a comprehensive review of the System in August 2022.[17] Among the areas FHFA explored as part of the review were the Banks' role in promoting affordable, sustainable, equitable, and resilient housing and community investment, including rental housing, and in addressing the unique needs of tribal communities, communities of color, rural communities, and other financially vulnerable and underserved communities. FHFA issued a Report based on its comprehensive review in November 2023, ''The Federal Home Loan Bank System at 100: Focusing on

[3] *See* 12 U.S.C. 1451 (note) and 1716.

[4] *See* 12 U.S.C. 1421 *et seq.*

[5] *See* 12 U.S.C. 4511(b).

[6] *See* 12 U.S.C. 4501(1) (the Enterprises and Banks have important public missions), (2) (their continued ability to accomplish their public missions is important, and effective regulation is needed to reduce risk of failure), and (7) (the Enterprises have an affirmative obligation to facilitate financing of affordable housing for low- and moderate-income families consistent with their public purposes, while maintaining a strong financial condition and a reasonable economic return).

[7] These include providing ongoing assistance to the secondary market for residential mortgages, including mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities. 12 U.S.C. 1716(3) and (4) (Fannie Mae charter purposes); 12 U.S.C. 1451 note (b)(3) and (4) (Freddie Mac charter purposes). They also include Enterprise affordable housing goals, *see* 12 U.S.C. 4561(a), 4562, and 4563; 12 CFR part 1282, subpart B, and Enterprise Duty to Serve affordable housing needs of certain underserved markets, *see* 12 U.S.C. 4565; 12 CFR part 1282, subpart C. In addition, the Enterprises are required to report annually to Congress on, among other things, assessments of the Enterprises' underwriting standards and business practices that affect their purchases of mortgages for low- and moderate-income families, and revisions to their standards and practices that promote affordable housing or fair lending. 12 U.S.C. 1723a(n)(2)(G) (Fannie Mae charter), 1456(f)(2)(G) (Freddie Mac charter).

[8] *See* 12 U.S.C. 4513(a)(1)(B)(i), (v).

[9] *See* 12 U.S.C. 1716(4) (Fannie Mae charter); 1451 note (b)(4) (Freddie Mac charter).

[10] *See* 12 U.S.C. 1723a(n)(2)(G), 1456(f)(2)(G).

[11] *See* 12 U.S.C. 4565; 12 CFR part 1282, subpart C.

[12] *See* 12 U.S.C. 4561(a) (FHFA to establish annual housing goals by regulation), 4562 (establishment of required categories of single-family housing goals), and 4563 (establishment of required multifamily affordable housing goals); 12 U.S.C. 4565 (Enterprise duty to facilitate secondary mortgage market for very low-, low-, and moderate-income families in certain underserved markets).

[13] *See* 12 U.S.C. 4565(b)(3)(A).

[14] *See* 12 U.S.C. 4567.

[15] *See https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-301-Million-for-Affordable-Housing-Programs.aspx.*

[16] *See, e.g.,* 12 U.S.C. 1427(a)(3)(B)(ii) states that Directors must have experience ''representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections[;]'' 12 U.S.C. 1430(g), (i), (j); 12 U.S.C. 1430c.

[17] *See https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Comprehensive-Review-of-the-FHLBank-System.aspx.*

the Future.'' [18] The Report noted the passage of the Fair Housing Act as a significant milestone in the development of the mortgage finance system and noted that compliance with fair housing and fair lending laws and equity initiatives is not currently assessed in supervisory ratings for the Banks. The Report also noted that participants in FHFA's comprehensive review of the System suggested that FHFA consider requiring the Banks to prepare an affordable housing strategy or equitable housing finance plan that would describe their planned activities and summarize actions taken in the prior year.

Under the Fair Housing Act, all Federal agencies which have regulatory or supervisory authority over financial institutions, including FHFA, are required to administer their programs and activities relating to housing and urban development in a manner that affirmatively furthers the purposes of the Fair Housing Act, which includes providing for fair housing throughout the United States.[19] FHFA has included considerations of fair housing and fair lending in rulemaking since its establishment.[20] FHFA also issued a policy statement on fair lending which describes its regulatory and oversight authorities to supervise and enforce fair lending laws with respect to its regulated entities.[21] FHFA issued orders to Fannie Mae and Freddie Mac for regular and special reports related to fair housing and fair lending.[22] FHFA issued guidance for the Enterprises on fair housing and fair lending supervisory expectations.[23] FHFA coordinates with HUD on fair lending and fair housing oversight,[24] and established a fair lending oversight data system in part to facilitate cooperation in interagency fair housing and fair lending oversight.[25] FHFA has also implemented the referral program for potential mortgage pricing disparities across mortgage lenders based on the Enterprises' data, as required by Congress in section 1128 of the Housing and Economic Recovery Act of 2008 (HERA).[26] FHFA also established the Equitable Housing Finance Plan program for the Enterprises to develop a framework for addressing barriers to sustainable housing opportunities for underserved communities through strategic planning and public participation.[27] FHFA joined other agencies in issuing the Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B in 2022.[28] In 2023, FHFA established a supervisory rating system for the Enterprises that evaluates compliance with fair housing and fair lending laws and equity initiatives.[29]

Barriers to Sustainable Housing Opportunities. Ongoing disparities and challenges in the housing market persist, which limit sustainable housing opportunities for underserved communities. The rest of Part A discusses some of these disparities and challenges by way of example. Both Enterprises' 2022–2024 Equitable Housing Finance Plans identify Black and Latino communities as underserved and include extensive discussions of barriers to sustainable housing opportunities.[30] The inclusion or discussion of a particular disparity, challenge, or underserved community is not an indication of FHFA's views on the needs of a community or what actions FHFA's regulated entities should take.

Challenges Accessing Sustainable Housing Opportunities. There are many underserved communities experiencing significant challenges in accessing sustainable housing opportunities. This includes, for example, families living on tribal land, in rural areas, and in rental homes. Almost half of renters are cost-burdened, paying more than 30 percent of their income on housing, compared to only 22 percent of homeowners.[31] More than 10 million households headed by someone over age 65 are cost-burdened, with the median older renter having net worth under $6,000 in 2019.[32] By 2035, the population age 80 and over is expected to double from its level in 2016. The population in rural areas is older and more likely to have lower income levels, with the median income for renters in high needs rural areas being $26,422 compared to $40,505 nationally.[33] Lower incomes can lead to greater cost burdens in rural areas, particularly for renters. For example, in Middle Appalachia, 49 percent of renters are cost-burdened.[34] Individuals with disabilities also face housing challenges. As an increasing proportion of households wish to age in place, there is often a lack of housing opportunities that provide for mobility and other physical impairments. Two percent of total housing inventory is accessible for people with mobility disabilities, while 14 percent of Americans have mobility disabilities.[35]

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[18] *See https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHLBank-System-at-100-Report.pdf.*

[19] 42 U.S.C. 3608(d); 42 U.S.C. 3601 *et seq.*

[20] *See, e.g.,* 12 CFR 1253.4(b)(3)(viii); 74 FR 31602, 31603, 31606 (July 2, 2009), 12 CFR 1254.6(a)(2) and 1254.8(b)(2); 84 FR 41886, 41905, 41906, 41907 (Aug. 16, 2019), and 12 CFR 1291.23(e); 83 FR 61186, 61208, 61238 (Nov. 28, 2018).

[21] 86 FR 36199 (July 9, 2021).

[22] *See* FHFA Orders In Re: Enterprise Compliance and Information Submission with Respect to Fair Lending, Nos. 2021–OR–FNMA–2 and 2021–OR–FHLMC–2 (FHFA's Fair Lending Orders), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/Fair-Lending-Oversight-Program.aspx#:~:text=Fair%20Lending%20Reporting%20Orders&text=The%20orders%20require%20the%20Enterprises,lending%20supervision%20and%20monitoring%20capabilities.*

[23] Advisory Bulletin AB 2021–04, *Enterprise Fair Lending and Fair Housing Compliance* (December 20, 2021), *available at https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/AdvisoryBulletinDocuments/AB%202021-04%20Enterprise%20Fair%20Lending%20and%20Fair%20Housing%20Compliance.pdf.*

[24] Memorandum of Understanding by and between the U.S. Department of Housing and Urban Development and the Federal Housing Finance Agency regarding Fair Housing and Fair Lending Coordination (Aug. 12, 2021), *available at https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/FHFA-HUD-MOU_8122021.pdf.*

[25] Fair Lending Oversight Data System of Records Notice, 87 FR 30947 (May 20, 2022), *available at https://www.govinfo.gov/content/pkg/FR-2022-05-20/pdf/2022-10798.pdf.*

[26] Public Law 110–289, 122 Stat. 2696, 2697 (2008) (*codified at* 12 U.S.C. 4561(d)).

[27] *See https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Equitable-Housing-Finance-Plans--for-Fannie-Mae-and-Freddie-Mac.aspx.*

[28] *See Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B* (Feb. 22, 2022), *available at https://www.federalreserve.gov/supervisionreg/caletters/CA%2022-2%20Attachment%20SPCP_Interagency_Statement_for_release.pdf.*

[29] *See* Advisory Bulletin AB 2023–05: *Enterprise Fair Lending and Fair Housing Rating System* (September 27, 2023), *available at: https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/Pages/AB_2023-05_Enterprise-Fair-Lending-and-Fair-Housing-Rating-System.aspx.*

[30] *See* Freddie Mac 2022–2024 *Equitable Housing Finance Plan* (June 2022), *available at https://www.freddiemac.com/about/pdf/2022-Freddie-Mac-Equitable-Housing-Finance-Plan.pdf;* Fannie Mae 2022–2024 Equitable Housing Finance Plan (June 2022), *available at https://www.fanniemae.com/media/43636/display.*

[31] When disaggregated by race, 57 percent of Black renter households were cost-burdened, and 31 percent of Black homeowner households were cost-burdened. *See* Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 2023, *available at https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.pdf.*

[32] *See* Jennifer Molinsky, ''Housing for America's Older Adults: Four Problems We Must Address,'' Joint Center for Housing Studies of Harvard University (Aug. 18, 2022), *available at https://www.jchs.harvard.edu/blog/housing-americas-older-adults-four-problems-we-must-address.*

[33] *See* Fannie Mae 2022–2024 *Duty to Serve Underserved Markets Plan* (Apr. 7, 2022), available at *https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FannieMae2022-24DTSPlan-April2022.pdf.*

[34] *Id.*

[35] *See* Freddie Mac 2022–2024 *Equitable Housing Finance Plan* (Apr. 2023), *available at https://www.freddiemac.com/about/pdf/Freddie-Mac-Equitable-Housing-Finance-Plan.pdf.*

Other populations, including persons identifying as lesbian, gay, bisexual, transgender, or queer (LGBTQ+), Native Americans, single parents, individuals with limited mainstream credit and banking history, and households with limited English proficiency (LEP), continue to report facing challenges in accessing the housing finance system. A study found that same-sex applicants are 73.12 percent more likely than different-sex applicants to be denied for a mortgage.[36] Mortgage financing opportunities for people living on Native American trust lands remain limited.[37] Research has found that the median single mothers of minor children possess only about $7,000 in family wealth, by far the lowest median wealth among all singles.[38] And relatedly, one study of census data found that only 31 percent of single mothers are also homeowners, compared to 64 percent of households overall.[39] Borrowers with limited credit histories, who are disproportionately likely to be Black or Hispanic or live in low-income neighborhoods, have difficulty accessing affordable credit.[40] Additionally, LEP households, or those who are more comfortable transacting in a language other than English, may also experience barriers to housing opportunities and housing sustainability. Often, LEP borrowers will rely on their English-proficient child, who may not be familiar with mortgage lending terms, as a translator.[41] As a result, this can leave the borrower without a full understanding of mortgage terms and conditions.

Disparities in Homeownership Rates and Wealth. The national homeownership rate has ranged from around 45 percent in some eras to around 65 percent in recent years.[42] However, there have been persistent gaps in the homeownership rate by race and ethnicity. In the fourth quarter of 2023, the White homeownership rate was 73.8 percent, the Black homeownership rate was 45.9 percent, the Latino homeownership rate was 49.8 percent, and the Asian, Native Hawaiian and Pacific Islander homeownership rate was 63.0 percent.[43] The Black and White homeownership gap, at 27.9 percentage points as of the fourth quarter of 2023, has persisted over time, though there have been some modest reductions in the gap since 2019. Even when the racial homeownership rate is stratified by household income, there continue to be significant disparities in homeownership between racial groups, even in the highest income brackets. For example, for households with an income over $150,000, there exists a 10-percentage point gap between Black and White families.[44]

A household's home is often its largest financial asset and key to wealth building and intergenerational wealth transfers, which in turn enable future generations to achieve homeownership. The Federal Reserve, in a 2022 survey, found that White families have the highest level of both median and mean family wealth: $285,000 and $1,367,170, respectively.[45] In contrast, Black families' median and mean wealth was $44,890 and $211,450, respectively. In other words, the typical Black family has about $16 in wealth for every $100 held by the typical White family. These wealth disparities grew between 2003 and 2018, though have narrowed slightly since 2018.[46] One study estimated that the total racial wealth gap is $10.14 trillion.[47] Black families are less likely to receive or expect to receive an inheritance, and, if they do, it is, on average, less than that of White households.[48] Black families are also less likely to obtain financial assistance from their personal networks, with 41 percent of Black families reporting they could receive $3,000 from family or friends compared to 72 percent of White families.[49] Black households are less likely to receive familial assistance with down payments and the other forms of financial support that can make homeownership achievable and sustainable.[50] Moreover, many Black, Latino, and Asian households provide financial assistance to older generations, which slows their ability to save for a down payment.[51]

Disparities Based on Disaggregated Data. For many underserved communities, it is critical to examine disaggregated data and data at the community level.[52] Failing to disaggregate may result in failure to identify significant disparities facing unique subgroups for the purpose of identifying barriers and improving housing policy. For example, although Asians and Pacific Islanders as a whole have homeownership rates above 60 percent, Korean Americans' homeownership rate is 54 percent and

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[36] *See* Hua Sun et al., ''Lending practices to same-sex borrowers,'' (Apr. 16, 2019), *available at https://www.pnas.org/doi/10.1073/pnas.1903592116.*

[37] *See* Fannie Mae 2022–2024 *Duty to Serve Underserved Markets Plan* (April 7, 2022), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FannieMae2022-24DTSPlan-April2022.pdf.*

[38] Federal Reserve Bank of St. Louis, ''Single Mothers Face Difficulties with Slim Financial Cushions'' (May 9, 2022) (defining singles as ''those who have never married, are divorced, widowed or separated''), *https://www.stlouisfed.org/on-the-economy/2022/may/single-mothers-slim-financial-cushions.*

[39] Dana Anderson, ''McAllen, Texas, Salt Lake City and Grand Rapids Have the Highest Homeownership Rates for Single Mothers,'' Redfin News (June 24, 2019), *https://www.redfin.com/news/single-mother-homeownership-rate-us/#:~:text=McAllen%2C%20Texas%2C%20where%20the%20typical,%25%20and%20Minneapolis%20(40.3%25).*

[40] CFPB, *Data Point: Credit Invisibles* at 6 (May 2015), *https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.*

[41] *See* Freddie Mac and Fannie Mae, ''Language Access for Limited English Proficiency Borrowers: Final Report,'' (Apr. 2017), *available at https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf.*

[42] *See* Don Layton, ''The Homeownership Rate and Housing Finance Policy, Part 1: Learning from the Rate's History,'' August 2021, *available at https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_homeownership_rate_layton_2021.pdf.*

[43] Federal Reserve Economic Data, Federal Reserve Bank of St. Louis; Housing and Homeownership: Homeownership Rate (retrieved February 13, 2024) *available at https://fred.stlouisfed.org/release/tables?rid=296&eid=784188#snid=784199; https://www.federalreserve.gov/econres/notes/feds-notes/greater-wealth-greater-uncertainty-changes-in-racial-inequality-in-the-survey-of-consumer-finances-accessible-20231018.htm#fig1.*

[44] *See* Fannie Mae 2022–2024 *Equitable Housing Finance Plan* (June 2022), p. 7, *available at https://www.fanniemae.com/media/43636/display.*

[45] *See* Aditya Aladangady et al., Board of Governors of the Federal Reserve System, ''Greater Wealth, Greater Uncertainty: Changes in Racial Inequality in the Survey of Consumer Finances,'' (Oct. 18, 2023), *available at https://www.federalreserve.gov/econres/notes/feds-notes/greater-wealth-greater-uncertainty-changes-in-racial-inequality-in-the-survey-of-consumer-finances-20231018.html.*

[46] *See* Earl Fitzhugh et al., McKinsey Institute for Black Economic Mobility, ''It's time for a new approach to racial equity,'' (Dec. 2, 2020), *available at https://www.mckinsey.com/bem/our-insights/its-time-for-a-new-approach-to-racial-equity.*

[47] *See* Fred Dews, ''Charts of the Week: The racial wealth gap; the middle-class income slump,'' The Brookings Institution (Jan. 8, 2021), *available at https://www.brookings.edu/blog/brookings-now/2021/01/08/charts-of-the-week-the-racial-wealth-gap-the-middle-class-income-slump/.*

[48] *See* Freddie Mac 2022–2024 *Equitable Housing Finance Plan* (June 2022), *available at* Freddie Mac Equitable Housing Finance Plan.

[49] Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances,* Bd. of Governors of the Fed. Res. Sys.: FEDS Notes (Sept. 28, 2020), *https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.html.*

[50] Michael Stegman and Mike Loftin. 2021. ''An Essential Role for Down Payment Assistance in Closing America's Racial Homeownership and Wealth Gaps.'' Washington, DC: Urban Institute.

[51] *See* Mike Dang, ''Their Children Are Their Retirement Plans,'' New York Times (Feb. 24, 2023), *available at https://www.nytimes.com/2023/01/21/business/retirement-immigrant-families.html.*

[52] *See* Leda Bloomfield et al., FHFA Insights Blog, ''Latino Diversity and Complexity: The Importance of Data Disaggregation,'' (Sept. 23, 2021), *available at https://www.fhfa.gov/Media/Blog/Pages/Latino-Diversity-and-Complexity-The-Importance-of-Data-Disaggregation.aspx.*

Nepalese Americans' homeownership rate is 33 percent.[53] There can be geographic differences, as well: while the overall homeownership gap between Black and White homeowners is 29.6 percentage points, in Minneapolis, the gap rises to 50 percentage points.[54]

There are also disparities in mortgage underwriting that may be obscured by looking at aggregated data.[55] For Latino communities, Mexican applicants have slightly higher approval rates than Latino applicants as a whole, but Puerto Rican and ''Other Hispanic'' applicants have lower approval rates. Among Asian applicants, the Vietnamese, Filipino, and ''Other Asian'' communities experience lower approval rates than White applicants, despite Asian applicants, as a whole, having similar approval rates to White applicants. Similarly, when the Pacific Islander group is disaggregated, it becomes clear that Samoan and ''Other Pacific Islander'' applicants have significantly lower approval rates than Native Hawaiian and Chamorro applicants.

Mortgage Market Disparities. Disparities are present in the mortgage market for several underserved communities. For example, in 2022, Black families comprised about 14 percent of the total U.S. population, but only about 7 percent of the loans that Fannie Mae and Freddie Mac purchased. American Indian and Alaska Native families comprised about 3 percent of the total U.S. population, but only about 1 percent of the loans that Fannie Mae and Freddie Mac purchased. In contrast, White families comprised about 62 percent of the U.S. population, but comprised about 68 percent of Fannie Mae and Freddie Mac acquisitions.[56]

FHFA has released data on Fannie Mae's and Freddie Mac's automated underwriting systems, presenting gaps in approval rates for applicants from certain groups over time compared to other groups. These underwriting tools complete credit risk assessments on loan applicants to determine whether a loan is eligible for sale to the Enterprises. Although the move to a more automated, less subjective system to assess creditworthiness in mortgage market underwriting was an important step in eliminating bias in subjective underwriting decisions, further improvements in automated underwriting to reduce gaps would promote better access to sustainable housing opportunities. In the fourth quarter of 2023, White applicants' automated underwriting system applications had approval rates of about 83 percent and 89 percent for the automated underwriting systems of Fannie Mae and Freddie Mac, respectively; Black applicants had approval rates of about 65 percent and 73 percent; Latino applicants had approval rates of about 75 percent and 80 percent; Asian applicants had approval rates of about 86 percent and 90 percent; American Indian and Alaska Native applicants had approval rates of about 76 percent and 78 percent; and Native Hawaiian and Pacific Islander applicants had approval rates of about 77 percent and 82 percent.[57]

Home Mortgage Disclosure Act (HMDA) data also shows higher denial rates by lenders for many underserved communities. For example, an analysis of the 2020 HMDA data found a denial rate of 27.1 percent for Black applicants compared to 13.6 percent for White applicants.[58] The trend in higher denial rates has persisted in HMDA data for many years.[59] A 2019 study of mortgage pricing found that Latino and Black borrowers pay 7.9 and 3.6 basis points more in interest for mortgages, respectively, even when controlling for several factors.[60] Pursuant to the Safety and Soundness Act, FHFA conducts an annual screening, preliminary findings, and referral process for lenders that demonstrate patterns of interest rate disparities for minority borrowers when compared with borrowers who are not minorities and describes the results in its Annual Report to Congress.[61] Based on the results of FHFA's 2019 and 2020 analyses, more than 36 percent of FHFA's preliminary findings were based on an annual percentage rate disparity of 10 basis points or more, with the most common preliminary findings and referrals for Latino and Black borrowers.[62]

The Federal Home Loan Bank of San Francisco entered into a research and product development initiative with a research institution to address issues related to the racial homeownership gap.[63] A study resulting from this partnership noted that the heavy reliance on certain credit attributes in the current mortgage underwriting process to the exclusion of other attributes limits opportunities for people of color.[64]

Additional mortgage market disparities and challenges remain with respect to rural areas, manufactured housing, and other market segments. For example, rural areas suffer from a lack of affordable multifamily and single-family capital, and borrowers typically have lower credit scores and higher mortgage denial rates than the overall population of borrowers.[65] Manufactured housing represents 13 percent of housing stock in rural areas, compared to 6.1 percent of the housing stock nationally.[66] Residents of owner-

[53] *See* Asian Real Estate Association, 2023–2024 State of Asia America Report, *available at https://areaa.org/resource-asia-america-report.*

[54] *See* Alanna McCargo et al., ''Mapping the black homeownership gap,'' (Feb. 26, 2018), *available at https://www.urban.org/urban-wire/mapping-black-homeownership-gap.*

[55] *See* Leda Bloomfield et al., FHFA Insights Blog, ''Asian Americans, Native Hawaiians, and Pacific Islanders: Visible Together,'' (May 30, 2023), *available at https://www.fhfa.gov/Media/Blog/Pages/Asian-Americans-Native-Hawaiians-and-Pacific-Islanders-Visible-Together.aspx.*

[56] Loan purchase data sourced from Enterprise data released by FHFA at https://www.fhfa.gov/DataTools/Downloads/Pages/Fair-Lending-Data.aspx. Total population statistics are drawn from 2020 Census data summarized at *https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html.* Total population statistics for White are provided as White alone. Total population statistics for Black and American Indian and Alaska Native are provided as alone or in combination with another race or ethnicity category.

[57] *See https://www.fhfa.gov/DataTools/Downloads/Pages/Fair-Lending-Data.aspx.*

[58] *See* Jung H. Choi et al., ''What Different Denial Rates Can Tell Us About Racial Disparities in the Mortgage Market,'' (Jan. 13, 2022), *available at https://www.urban.org/urban-wire/what-different-denial-rates-can-tell-us-about-racial-disparities-mortgage-market.*

[59] *See* Laurie Goodman et al., ''Traditional Mortgage Denial Metrics May Misrepresent Racial and Ethnic Discrimination,'' (Aug. 23, 2018), p. 5, *available at https://www.urban.org/urban-wire/traditional-mortgage-denial-metrics-may-misrepresent-racial-and-ethnic-discrimination.*

[60] *See* Robert Bartlett et al., Haas School of Business UC Berkeley, ''Consumer-Lending Discrimination in the FinTech Era,'' (Nov. 2019), *available at https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf.*

[61] 12 U.S.C. 4561(d).

[62] *See* Federal Housing Finance Agency, 2021 Report to Congress, p. 67, *available at https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA-2021-Annual-Report-to-Congress.pdf.*

[63] *See https://fhlbsf.com/about/newsroom/urban-institute-and-fhlbank-san-francisco-announce-new-efforts-close-racial?f%5B0%5D=authored_on%3A2021.*

[64] *See* Jung H. Choi et al., Urban Institute and Federal Home Loan Bank of San Francisco, ''Reducing the Black-White Homeownership Gap through Underwriting Innovations: The Potential Impact of Alternative Data in Mortgage Underwriting,'' *available at https://www.urban.org/sites/default/files/2022-10/Reducing%20the%20Black-White%20Homeownership%20Gap%20through%20Underwriting%20Innovations.pdf.*

[65] *See* Fannie Mae 2022–2024 *Duty to Serve Underserved Markets Plan* (April, 2022), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FannieMae2022-24DTSPlan-April2022.pdf;* Freddie Mac 2022–2024 *Duty to Serve Underserved Markets Plan* (April, 2022), *available at https://www.fhfa.gov/PolicyPrograms Research/Programs/Documents/FreddieMac2022-24DTSPlan-April2022.pdf.*

[66] Fannie Mae 2022–2024 *Duty to Serve Underserved Markets Plan* (April, 2022), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FannieMae2022-24DTSPlan-April2022.pdf;* Freddie Mac 2022–2024 *Duty to Serve Underserved Markets Plan* (April, 2022),

occupied manufactured housing have lower incomes and lower net worth than residents of site-built homes, and lack adequate mortgage financing options.[67] FHFA's Duty to Serve program works to address many of these disparities.[68]

Appraisal and Valuation Disparities. FHFA's Uniform Appraisal Dataset (UAD) Aggregate Statistics highlight that properties located in minority tracts have a higher proportion of appraised values less than the contract price. According to the 2021 appraisal statistics, 23.3 percent of homes in high minority tracts (80.1–100 percent) experienced an appraised value less than the contract price.[69] This is compared to 13.4 percent of homes in White tracts (0–50 percent) and 19.2 percent of homes in minority tracts (50.1–80 percent).[70] Additionally, FHFA identified examples of appraisal reports with direct references to the racial and ethnic composition of the neighborhood.[71] FHFA also identified time adjustments as a factor in appraisals that contributes to appraised values less than contract price, and racial disparities in appraisal outcomes.[72] Freddie Mac's research showed that properties in minority tracts are more likely than properties in White tracts to receive an appraisal lower than the contract price.[73] A Fannie Mae publication concluded that White borrowers' homes were overvalued at higher rates across all neighborhoods, but stronger effects were present for White borrowers in Black neighborhoods.[74] Additional research has also highlighted and analyzed disparities in property valuation.[75] Consumer groups have begun to conduct fair housing paired testing of appraisers, resulting in the filing of complaints.[76] Rural markets also experience challenges related to appraiser availability and appraisal cost.[77] Similarly, the availability of appraisals for manufactured housing is limited due in part to the lack of comparable property data and the lack of familiarity with appraising techniques surrounding manufactured housing.[78]

Enterprise Contributions Pursuant to the Equitable Housing Finance Planning Framework and FHFA Oversight. In accordance with the authorizing statutes, each Enterprise's mission includes promoting access to mortgage credit throughout the Nation,[79] and, as discussed above, a number of statutory authorities speak to the Enterprises' statutory purposes and FHFA's statutory duties to ensure the Enterprises meet those purposes. FHFA's experience in overseeing the Equitable Housing Finance Plan program since it was originally established in 2021 has informed the rule. In addition, FHFA finds that the programs undertaken by the Enterprises under their 2022–2024 Equitable Housing Finance Plans have helped the Enterprises comply with the authorizing statutes, and that the program and oversight framework has helped FHFA fulfill its statutory duties.

For the first Equitable Housing Finance Plan cycle, the Enterprises focused on addressing inequities and removing barriers to housing opportunities in a manner consistent with safety and soundness, and borrower sustainability for Black and Latino borrowers, as these borrower populations have been historically denied consistent and systemic fair, just, and impartial treatment and face persistent disparities in accessing housing. Although the Enterprises focused their 2022–2024 Equitable Housing Finance Plans on addressing barriers faced by Black and Latino borrowers, all implemented actions were beneficial to numerous underserved communities.

Freddie Mac pursued a variety of activities under its 2022–2024 Equitable Housing Finance Plan to achieve its objectives. To help eliminate disparities for Black and Latino communities in the Multifamily sector, Freddie Mac expanded financing for affordable housing developers and improved access to education and financing opportunities for diverse and emerging multifamily developers through its Develop the Developer program. Freddie Mac also established a fair servicing process to help identify gaps in loss mitigation outcomes, promoted Borrower Help Centers, and expanded use of its own renovation products to preserve affordable single-family homes. It financed rehabilitation loans to

available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FreddieMac2022-24DTSPlan-April2022.pdf.

[67] *See* Fannie Mae 2022–2024 *Duty to Serve Underserved Markets Plan* (April, 2022), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FannieMae2022-24DTSPlan-April2022.pdf;* Freddie Mac 2022–2024 *Duty to Serve Underserved Markets Plan* (April, 2022), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FreddieMac2022-24DTSPlan-April2022.pdf.*

[68] *See* Fannie Mae 2022–2024 *Duty to Serve Underserved Markets Plan* (April, 2022), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FannieMae2022-24DTSPlan-April2022.pdf;* Freddie Mac 2022–2024 *Duty to Serve Underserved Markets Plan* (April, 2022), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FreddieMac2022-24DTSPlan-April2022.pdf.*

[69] *See* Jonathan Liles, ''Exploring Appraisal Bias Using UAD Aggregate Statistics,'' FHFA Insights Blog (Nov. 2, 2022), *available at https://www.fhfa.gov/Media/Blog/Pages/Exploring-Appraisal-Bias-Using-UAD-Aggregate-Statistics.aspx.*

[70] For 2022, 17.15 percent of home purchase appraisals were below contract price in high minority tracts, compared to 14.3 percent in minority tracts and 11.2 percent in White tracts. Uniform Appraisal Dataset Aggregate Statistics, *available at https://www.fhfa.gov/DataTools/Pages/UAD-Dashboards.aspx.*

[71] *See* Chandra Broadnax, ''Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary,'' FHFA Insights Blog (Dec. 14, 2021), *available at https://www.fhfa.gov/Media/Blog/Pages/Reducing-Valuation-Bias-by-Addressing-Appraiser-and-Property-Valuation-Commentary.aspx.*

[72] *See* Scott Susin, ''Underutilization of Appraisal Time Adjustments,'' (Jan. 2024), *available at https://www.fhfa.gov/Media/Blog/Pages/Underutilization-of-Appraisal-Time-Adjustments.aspx;* Scott Susin, ''Underappraisal Disparities and Time Adjustments,'' (Jan. 2024), *available at https://www.fhfa.gov/Media/Blog/Pages/Underappraisal-Disparities-and-Time-Adjustments.aspx.*

[73] *See* Melissa Narragon et al., ''Racial & Ethnic Valuation Gaps in Home Purchase Appraisals—A Modeling Approach,'' (May 2022), *available at https://www.freddiemac.com/research/insight/20220510-racial-ethnic-valuation-gaps-home-purchase-appraisals-modeling-approach;* Freddie Mac, ''Racial and Ethnic Valuation Gaps in Home Purchase Appraisals-A Modeling Approach,'' (Sept. 20, 2021), *available at https://www.freddiemac.com/research/insight/20210920-home-appraisals.*

[74] *See* Jake Williamson et al., ''Appraising the Appraisal,'' (Feb. 2022) *available at https://www.fanniemae.com/media/42541/display.*

[75] *See, e.g.,* Andre Perry et al., The Brookings Institution, ''The Devaluation of Assets in Black Neighborhoods: The Case of Residential Property (Nov. 27, 2018), *available at https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/;* Junia Howell et al., ''Appraised: The Persistent Evaluation of White Neighborhoods as More Valuable Than Communities of Color,'' (Nov. 2022), *available at https://www.eruka.org/appraised;* Edward Pinto et al., American Enterprise Institute, ''How Common is Appraiser Racial Bias—An Update,'' (May 2022), *available at https://www.aei.org/wp-content/uploads/2022/06/How-Common-is-Appraiser-Racial-Bias-An-Update-May-2022-FINAL-corrected-1.pdf?x91208.*

[76] Jake Lilien, National Community Reinvestment Coalition, ''Faulty Foundations: Mystery-Shopper Testing in Home Appraisals Exposes Racial Bias Undermining Black Wealth,'' (Oct. 2022), *available at https://ncrc.org/faulty-foundations-mystery-shopper-testing-in-home-appraisals-exposes-racial-bias-undermining-black-wealth/.*

[77] *See* FHFA, Request for Information on Appraisal-Related Policies, Practices, and Processes (Dec. 28, 2020), p. 4, *available at https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/RFI-Appraisal-Related-Policies.pdf;* Freddie Mac 2022–2024 *Duty to Serve Underserved Markets Plan* (April, 2022), p. 49, *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FreddieMac2022-24DTSPlan-April2022.pdf.*

[78] *See* Fannie Mae 2022–2024 *Duty to Serve Underserved Markets Plan* (April, 2022), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FannieMae2022-24DTSPlan-April2022.pdf;* Freddie Mac 2022–2024 *Duty to Serve Underserved Markets Plan* (April, 2022), *available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FreddieMac2022-24DTSPlan-April2022.pdf.*

[79] 12 U.S.C. 1716(4) (Fannie Mae charter); 1451 note (b)(4) (Freddie Mac charter).

maintain and improve the quality of existing affordable housing stock and used its preservation loan agreements to preserve affordable rents at affordable housing properties that do not receive government subsidies. To promote renter empowerment at multifamily properties, Freddie Mac established a Renter Resource Organization program and expanded CreditSmart, a free financial and homeownership education curriculum for renters and borrowers.

Freddie Mac employed affirmative outreach methods to ensure housing professionals were equipped with equity-related information, education, and resources to ensure its servicing and oversight policies promote positive borrower-home retention outcomes. Freddie Mac followed up with its Mission Servicing Oversight Framework that allows the Enterprise to work with servicers that provide high-touch engagement with at-risk borrowers to offer early delinquency counseling and help mitigate mortgage defaults. To combat appraisal bias, a text detection method was added to Freddie Mac's Loan Collateral Advisor tool to flag subjective words and phrases that could indicate bias to better educate appraisers and correct the use of potentially biased language in appraisal reports with real-time feedback. Finally, both Freddie Mac and Fannie Mae continued the Appraiser Diversity Initiative to provide scholarships and promote the diversity of new entrants to the residential appraisal profession by reducing the barriers to entry, including education, training, and experience requirements.

Fannie Mae also pursued a variety of activities under its 2022–2024 Equitable Housing Finance Plan to achieve its objectives. Fannie Mae introduced HomeView, a free online homeownership education course designed to address misconceptions and knowledge gaps about the home purchase and mortgage qualification process. Fannie Mae also made the HomeView course available in Spanish. Fannie Mae used its Here2Help program to provide counseling services for renters and homeowners facing financial hardships and offered its Future Housing Leaders program to connect college students from diverse institutions to career opportunities in the housing industry. In its efforts to assist Black and Latino renters and support affordable housing in the Multifamily sector, Fannie Mae offered pricing and underwriting incentives for multifamily borrowers that set aside at minimum 20 percent of a property's units as affordable units for renters earning up to 120 percent of the area median income (AMI) in very low-income markets through their Sponsor-Dedicated Workforce and Sponsor-Initiated Affordability programs. Fannie Mae also introduced the Multifamily Positive Rental Payment History program to help renters establish and improve credit scores using bank transaction data and is currently exploring ways to decrease renters' upfront security deposits, which can then be saved as cash reserves and later used towards down payment and/or closing costs. Fannie Mae also agreed to partner with local housing organizations to support the revitalization and expansion of housing opportunities in historically Black neighborhoods.

In their efforts to advance equity as part of their Equitable Housing Finance Plans, both Enterprises provided liquidity for eligible lender-developed Special Purpose Credit Programs (SPCPs) and developed their own SPCPs to expand access to mortgage funding for historically underserved communities.[80]

Fannie Mae initiated several appraisal modernization efforts, including appraisal text scanning reviews and introduction of the Value Acceptance/Property Data option that permits lenders to bypass an appraisal if interior and exterior property data collection is provided to verify the property's eligibility prior to the note date. In order to extend credit access to underserved communities that have a low credit score or no credit score established, Freddie Mac improved its automated underwriting system, Loan Product Advisor (LPA), to increase accuracy and fairness by removing reliance on third-party credit scores and using a proprietary, enhanced credit view that focuses specifically on mortgage credit risk. LPA was also improved to consider bank transaction data, allowing positive cash flow and on-time rent payments to be factored into loan purchase decisions. Fannie Mae also improved its automated underwriting system, Desktop Underwriter (DU), to consider a borrower's positive rent payment history as part of the credit risk assessment and allow for cash-flow assessments using a borrower's bank transaction data in cases when the borrower has no established credit score.

The Enterprises' respective performance reports demonstrate their efforts to ensure all communities have greater access to sustainable rental and homeownership opportunities and better preparedness for obtaining a mortgage loan, all while fulfilling their statutory missions to promote affordable housing, serve the public interest, and ensure safety and soundness. Ultimately, FHFA expects that Enterprise changes implemented as part of the inaugural Equitable Housing Finance Plans will have long-standing impacts, even as the Enterprises proceed to devise new objectives to advance sustainable housing opportunities and address a new set of barriers impacting the spectrum of underserved communities for the 2025–2027 Equitable Housing Finance Plans.

Based on FHFA's experience in overseeing the activities undertaken by the Enterprises pursuant to their 2022–2024 Equitable Housing Finance Plans and the public reporting provided by the Enterprises, FHFA finds that the Enterprises' activities and the EHFP program have helped the Enterprises meet their statutory purposes under the authorizing statutes and helped FHFA fulfill its statutory duties. FHFA finds these activities have assisted the Enterprises in fulfilling their mission to provide stability to the secondary market for residential mortgages; provide ongoing assistance to the secondary market for residential mortgages (including activities related to mortgages on housing for low- and moderate-income families) by increasing the liquidity of mortgage investments and improving distribution of investment capital available for residential mortgage financing; and promote access to mortgage credit throughout the United States.[81] FHFA finds that establishing the Equitable Housing Finance Plan program and overseeing the Enterprises' performance has assisted FHFA in fulfilling its duties to ensure the purposes of the Safety and Soundness Act, the authorizing statutes, and other applicable laws (including the Fair Housing Act, the Equal Credit Opportunity Act, and Section 5 of the Federal Trade Commission Act (FTC Act)) are carried out.[82]

[80] 15 U.S.C. 1691(c)(3); 12 CFR 1002.8(a); Federal Housing Finance Agency et. al., *Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B* (Feb. 22, 2022), *https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/SPCP_Interagency_Statement_2022_02_22.pdf; see also* Susan M. Bernard and Patrice Alexander Ficklin, CFPB, ''Expanding access to credit to underserved communities'' (July 31, 2020), *https://www.consumerfinance.gov/about-us/blog/expanding-access-credit-underserved-communities/. See* OCC, ''OCC Announces Project REACh to Promote Greater Access to Capital and Credit for Underserved Populations'' (July 10, 2020), *https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-89.html.*.

[81] 12 U.S.C. 1451 (note) and 1716.

[82] 12 U.S.C. 4511(b) and 4513(a)(1)(B)(v).

B. Overview of the Proposed Rule

FHFA Fair Lending Oversight of the Regulated Entities. The proposed rule included regulatory codification of many of 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 ,[83] and taking enforcement actions. The proposed rule also included codification of FHFA's oversight of potential unfair or deceptive acts or practices (UDAP) by the regulated entities and requirements for the regulated entities to file certifications of compliance with fair lending, fair housing, and UDAP laws with regular reports. The proposed rule also articulated more precise standards related to fair housing, fair lending, and UDAP and principles of equitable housing for regulated entity boards of directors.

Enterprise Equitable Housing Finance Plans. The proposed rule included regulatory codification of FHFA's current requirements for the Enterprises' Equitable Housing Finance Plans along with establishment of additional public disclosure and reporting requirements and expanded program requirements. The proposed rule did not propose to codify these standards for the Banks but asked commenters how equitable housing finance should be addressed for the Banks.

Enterprise Data Collection and Reporting to FHFA. The proposed rule included regulatory codification for the Enterprises to collect, maintain, and report data on language preference, homeownership education, and housing counseling for applicants and borrowers. This regulatory codification is consistent with FHFA policy announced in May 2022 for mandatory use of the Supplemental Consumer Information Form.[84]

II. Discussion of Comments and Agency Response

A. Overview of Comments Received

A total of 121 public comments were posted to the public docket for the proposed rule. The comments submitted include comments from members of the public, trade associations, industry participants, FHFA regulated entities, consumer advocacy organizations, research organizations, think tanks, and others. Several comment letters were signed by coalitions of organizations. Several comments primarily pertained to matters outside the scope of the rulemaking, such as complaints about conditions at particular multifamily properties, comments regarding Enterprise guarantee fees, or proposals for future language access policies. Four of the posted comments are meeting summaries from FHFA meetings with Fannie Mae, Freddie Mac, Ceres, and the National Fair Housing Alliance that were documented and posted in accordance with FHFA's Policy on Communications with Outside Parties in Connection with FHFA Rulemakings.[85] Members of Congress submitted a letter to FHFA that FHFA posted to the public docket and treated as a comment letter on the rule in accordance with the Members' wishes. Comments received and FHFA's responses are summarized by topic below.

B. Unfair or Deceptive Acts or Practices

FHFA proposed to codify in regulation the regulated entities' existing obligations to comply with the FTC Act's prohibition on UDAP.[86] FHFA received ten comments on this proposed section from the regulated entities, consumer and civil rights advocates, and industry participants.

Comments from regulated entities requested additional guidance from FHFA on UDAP compliance. FHFA expects to address these requests by issuing additional advisory guidance that will provide further clarity on FHFA's supervisory expectations, as other agencies have done for the entities they regulate.[87] Consumer advocate commenters supported the proposed requirement to codify UDAP compliance and asserted it was consistent with FHFA's authority and the oversight of financial institutions by other Federal financial regulators.

Industry commenters challenged codification of FHFA's oversight of the regulated entities' compliance with UDAP, arguing that UDAP is distinct from fair lending and fair housing, and exceeds congressional intent for FHFA's authority. Commenters also raised concerns that codification of UDAP compliance oversight may result in unintentional consequences for primary mortgage market lenders and asserted that codifying UDAP compliance in regulation was legally unnecessary. One commenter similarly contended that because the regulated entities do not interact with consumers in the same way as other lenders subject to UDAP, UDAP compliance requirements for the regulated entities were inappropriate.

FHFA considered these comments and determined that the proposed provisions are necessary to carry out its statutory duties and purposes and the benefits of codifying FHFA's oversight of regulated entity UDAP compliance in regulation otherwise outweigh commenters' concerns. The broad language of Section 5 of the FTC Act prohibits ''unfair or deceptive acts or practices in or affecting commerce,'' which would encompass activities of FHFA's regulated entities.[88] The Safety and Soundness Act charges FHFA with overseeing its regulated entities' compliance not only with the purposes of the Safety and Soundness Act and the authorizing statutes, but also with ''any other applicable law,'' [89] and to engage in enforcement for noncompliance with law.[90]

FHFA acknowledges that UDAP is distinct from fair lending and fair housing. In the proposed rule, FHFA distinguished between the two by separating UDAP specific language from fair lending specific language to clarify that FHFA does not view UDAP compliance and fair lending compliance as identical.[91] Furthermore, FHFA

[83] *See https://www.fhfa.gov/SupervisionRegulation/LegalDocuments/Pages/Orders.aspx.*

[84] *See https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Mandatory-Use-of-the-Supplemental-Consumer-Information-Form.aspx.*

[85] Policy on Communications with Outside Parties in Connection with FHFA Rulemakings (March 5, 2019), *available at https://www.fhfa.gov/AboutUs/Policies/Documents/Ex-Parte-Communications-Public-Policy_3-5-19.pdf.*

[86] 15 U.S.C. 45(a)(1).

[87] *See* Federal Reserve et. al., *Interagency Guidance Regarding Unfair or Deceptive Credit Practices* (Aug. 22, 2014), *available at https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/unfair-or-deceptive-credit-practices/interagency-guidance-regarding-unfair-deceptive-credit-practices;* Consumer Financial Protection Bureau, *Unfair, Deceptive, or Abusive Acts or Practices (UDAAPs) examination procedures* (Oct. 1, 2012), *available at https://www.consumerfinance.gov/compliance/supervision-examinations/unfair-deceptive-or-abusive-acts-or-practices-udaaps-examination-procedures/;* Board of Governors of the Federal Reserve System & Federal Deposit Insurance Corporation, *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (March 11, 2004), *available at https://www.federalreserve.gov/boarddocs/press/bcreg/2004/20040311/attachment.pdf; see also* Federal Deposit Insurance Corporation, *Inactive Financial Institution Letters: Guidance on Unfair or Deceptive Acts or Practices* (May 30, 2002), *available at https://www.fdic.gov/news/inactive-financial-institution-letters/2002/fil0257.html.*

[88] 15 U.S.C. 45(a)(1).

[89] 12 U.S.C. 4511(b)(2).

[90] 12 U.S.C. 4511(b)(2), 4526(a), 4513(a)(1)(B)(v), and 4631. FHFA's cease-and-desist authority is similar to Section 8 of the Federal Deposit Insurance Act under which the FDIC (for example) enforces unfair or deceptive acts or practices. *See also Faiella* v. *Green Tree Servicing, LLC,* No. 16-cv-088–JD, 2017 WL 589096, *7 (D.N.H. Sept. 14, 2017) (''These statutory grants of power can reasonably be construed to grant FHFA regulatory authority over Fannie Mae's mortgage and foreclosure practices and any unfair or deceptive practices arising from them.'').

[91] *See* 88 FR 25293, 25307–08 (Apr. 26, 2023).

believes that both frameworks have related goals of consumer protection and fair dealing in the mortgage market, and notes that other financial regulators treat both as related consumer protection standards. Thus, FHFA believes this final rule is an appropriate vehicle for affirming UDAP compliance obligations [92] for the regulated entities.[93]

FHFA does not expect the final rule will impact primary market lenders, as they are already subject to UDAP compliance requirements from the other Federal financial regulators, including the Consumer Financial Protection Bureau, and the Federal Trade Commission.[94] This final rule does not apply to primary market lenders and FHFA's enforcement and supervision would be limited to its own regulated entities.

Codification of the Enterprises' and the Banks' existing UDAP compliance obligations would be consistent with the broad nature of Section 5 of the FTC Act, the actions of the prudential regulators for their regulated entities, and FHFA's supervisory responsibilities.[95] For example, such compliance would support FHFA's principal duty to ensure that the regulated entities manage risks and foster fair, efficient, and competitive housing finance markets. Indeed, one of the core purposes served by UDAP prohibitions is to correct actions that impede efficient and competitive marketplaces, such as those that ''unreasonably create[ ] or take[ ] advantage of an obstacle to the free exercise of consumer decision-making.'' [96] Given the strong statutory support for fair lending oversight, FHFA's concurrent oversight of UDAPs in connection with fair lending oversight would further the efficient supervision and examination of the regulated entities. Ensuring UDAP compliance can also reasonably be understood to be part of FHFA's duty to ensure that the regulated entities' activities and operations are consistent with the ''public interest.''

Furthermore, FHFA's regulated entities have significant impacts on consumers. The Enterprises maintain underwriting models and other automated systems and lending and servicing standards that have substantial potential to affect consumers and the housing market. There are certain circumstances involving mortgage servicing and disposition of Real Estate Owned (REO) properties where FHFA's regulated entities or their agents interact with consumers. The regulated entities also provide consumer education and outreach activities to borrowers and applicants. Additionally, UDAP is not limited to consumers [97] and the Enterprises and Banks have a duty to ensure that their dealings with other parties protected by UDAP standards are compliant and that their standards that affect primary market lenders are consistent with UDAP. FHFA plans to give due consideration to any effects on primary market participants in the supervision and regulation of regulated entity UDAP compliance, just as it does in all aspects of its work, and to coordinate with other regulators as appropriate. FHFA agrees that it is not necessary for FHFA to issue a rule to supervise the regulated entities for UDAP compliance.[98] However, given that FHFA had not previously supervised and enforced UDAP standards, FHFA believes that it was valuable to provide notice and opportunity for comment to both the regulated entities and the public. Accordingly, FHFA is adopting § 1293.11(b) of the final rule on regulated entity UDAP compliance with no changes from the proposed rule.

C. Board Standards and Responsibilities

FHFA proposed to require the board of directors of a regulated entity to direct the entity's operations in conformity with fair lending, fair housing, and UDAP laws. FHFA received two comments from the Enterprises regarding the responsibilities of boards of directors. One comment raised concerns that requiring boards of directors to direct the operations of a regulated entity consistent with fair housing, fair lending, and UDAP authorities is duplicative of existing compliance duties and places fair lending above other compliance obligations.

FHFA believes that the proposed language clarifies rather than duplicates existing compliance duties. The regulated entities are currently required to comply with fair housing, fair lending, and UDAP laws,[99] and the regulated entities' boards of directors are required to oversee compliance

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[92] FHFA is codifying its authority as a primary regulator to oversee the regulated entities compliance with existing obligations, including UDAP. *See* 15 U.S.C. 45(n) (UDAP); 42 U.S.C. 3601 (FHA); 15 U.S.C. 1691 (ECOA); 12 U.S.C. 4517 (stating that ''[FHFA] examiners shall have the same authority . . . applicable to examiners employed by the Federal Reserve banks'').

[93] *See* 15 U.S.C. 45(n) (UDAP); 42 U.S.C. 3601 (FHA); 15 U.S.C. 1691 (ECOA); 12 U.S.C. 4513(a)(1)(B)(v) (stating that a principal duty of the FHFA Director is to ensure that ''the activities of each regulated entity and the manner in which such regulated entity is operated are consistent with the public interest.'').

[94] *See, e.g.,* Consumer Financial Protection Bureau, *Unfair, Deceptive, or Abusive Acts or Practices (UDAAPs) examination procedures* (Oct. 1, 2012), *available at https://www.consumerfinance.gov/compliance/supervision-examinations/unfair-deceptive-or-abusive-acts-or-practices-udaaps-examination-procedures/;* Federal Trade Commission, *Policy Statement on Unfairness* (Dec. 17, 1980), *available at: https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness;* Federal Trade Commission, *Policy Statement on Deception* (Oct. 14, 1983), *available at https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf;* Office of the Comptroller of the Currency, *Unfair or Deceptive Acts or Practices and Unfair, Deceptive, or Abusive Acts or Practices* (June 2020), *available at https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/unfair-deceptive-act/pub-ch-udap-udaap.pdf;* National Credit Union Administration, *Unfair or Deceptive Credit Practices* (August 2014), *available at https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/unfair-or-deceptive-credit-practices;* Board of Governors of the Federal Reserve System & Federal Deposit Insurance Corporation, *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (March 11, 2004), *available at https://www.federalreserve.gov/boarddocs/press/bcreg/2004/20040311/attachment.pdf.*

[95] *See, e.g.,* Consumer Financial Protection Bureau, *Unfair, Deceptive, or Abusive Acts or Practices (UDAAPs) examination procedures* (Oct. 1, 2012), *available at: https://www.consumerfinance.gov/compliance/supervision-examinations/unfair-deceptive-or-abusive-acts-or-practices-udaaps-examination-procedures/;* Federal Trade Commission, *Policy Statement on Unfairness* (Dec. 17, 1980), *available at https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness;* Federal Trade Commission, *Policy Statement on Deception* (Oct. 14, 1983), *available at: https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf;* Office of the Comptroller of the Currency, *Unfair or Deceptive Acts or Practices and Unfair, Deceptive, or Abusive Acts or Practices* (June 2020), *available at https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/unfair-deceptive-act/pub-ch-udap-udaap.pdf;* National Credit Union Administration, *Unfair or Deceptive Credit Practices* (August 2014), *available at https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/unfair-or-deceptive-credit-practices;* Board of Governors of the Federal Reserve System & Federal Deposit Insurance Corporation, *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (March 11, 2004), *available at https://www.federalreserve.gov/boarddocs/press/bcreg/2004/20040311/attachment.pdf.*

[96] Federal Trade Commission, ''Policy Statement on Unfairness'' (Dec. 17, 1980), *available at https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness.*

[97] *See Federal Trade Commission* v. *IFC Credit Corp.,* 543 F. Supp. 2d 925, 941 (N.D. Ill. 2008).

[98] *See Faiella* v. *Green Tree Servicing, LLC,* No. 16–cv–088–JD, 2017 WL 589096, *7 (D.N.H. Sept. 14, 2017) (''These statutory grants of power can reasonably be construed to grant FHFA regulatory authority over Fannie Mae's mortgage and foreclosure practices and any unfair or deceptive practices arising from them.'').

[99] *See* FHFA Advisory Bulletin AB 2021–04: *Enterprise Fair Lending and Fair Housing Compliance* (Dec. 20, 2021), *available at https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/Pages/Enterprise-Fair-Lending-and-Fair-Housing-Compliance.aspx.*

risks.[100] The proposed language clarified that the board of directors must consider fair lending, fair housing, and UDAP compliance in its oversight of the regulated entity. The proposed section referenced 12 CFR 1239.4(b)(4), which sets out the duties of the regulated entities' boards of directors. Section 1239.4(b)(4) states that each director on the board of a regulated entity has a duty to ''[d]irect the operations of the regulated entity in conformity with the requirements set forth in the authorizing statutes, the Safety and Soundness Act, and this chapter[.]'' The proposed language referenced the general board responsibilities laid out in § 1239.4(b)(4) and makes clear that that responsibility includes directing the regulated entity's behavior in compliance with fair lending, fair housing, and UDAP laws in addition to compliance with the Safety and Soundness Act and other authorizing statutes such as the Enterprises' charter acts, not in lieu of compliance with other authorities.[101]

Furthermore, supervisory rating systems routinely consider board engagement in entities' compliance management programs and dedication to compliance management in rating an entity. For example, the Federal Financial Institutions Examination Council (FFIEC) Uniform Interagency Consumer Compliance Rating System measures entities based on their board oversight of and commitment to the compliance management system.[102]

One commenter objected to the use of ''directs'' as the board of directors' responsibility, arguing that a board of directors actually ''oversees'' the operations of an entity. Section 1239.4(b)(4) uses the term ''direct'' in regard to the board of directors' oversight responsibility.[103] In the preamble of the final rule promulgating § 1239.4(b)(4), FHFA responded to a comment asking whether ''directs'' was the appropriate language for a board's responsibilities.[104] FHFA explained that the language had originated in regulations promulgated by FHFA's predecessor agencies, the Federal Housing Finance Board and the Office of Federal Housing Enterprise Oversight.[105] After analysis of state laws governing the Enterprises' corporate responsibility duties, FHFA revised the proposed language to read that management of the entity should be ''by or under the direction of'' of the board.[106] FHFA expects boards of directors to direct management consideration of whether and how much potential decisions heighten or mitigate fair lending, fair housing, and UDAP risk, as appropriate, prior to making decisions. After consideration, FHFA believes that the use of ''direct'' in the proposed rule is consistent with the language in § 1239.4(b)(4) of this chapter as it appropriately reflects a board's responsibilities and has retained it in this final rule.

Finally, while not raised by any commenters, FHFA is aware of the holding in *Meyer* v. *Holley* that directors of a board are generally not vicariously liable for the conduct of their employees or agents under the Fair Housing Act, even if the corporation itself is held vicariously liable.[107] FHFA believes that this final rule is consistent with that holding.

Accordingly, FHFA is adopting § 1293.11 of the final rule with no changes from the proposed rule.

D. Certification of Compliance

FHFA proposed to require the regulated entities to certify compliance with fair lending, fair housing, and UDAP laws with each regular report concerning fair housing and fair lending submitted. FHFA received five comments regarding the proposal to require certifications of compliance.

Comments from the regulated entities uniformly opposed the proposed requirement for certifications of compliance with fair housing, fair lending, and UDAP laws, stating it would be too burdensome and could create liability. One commenter suggested that such a certification would place fair lending and fair housing above other compliance concerns. A second commenter suggested that such a certification would require ''absolute compliance'' and suggested instead that FHFA require a certification of accuracy or certification of a ''system reasonably assured to ensure compliance.'' A third commenter opposed the proposed requirement on the basis that it was too broad and recommended altering the language to certify compliance ''to the best of one's knowledge and belief following reasonable or due inquiry of the certifying official.''

One civil rights advocate commenter observed that FHFA has authority for requiring certifications and proposed expanding the language to apply to special reports and regular reports, and to cite Section 5 of the FTC Act directly. One industry commenter opposed requiring certification of compliance with UDAP, stating that inclusion of UDAP was inappropriate and could have unintended consequences for primary market participants. FHFA understood this comment to be more directly related to proposed § 1293.11(b) and responded to it in Section II.B. above.

FHFA does not intend to create liability with this certification, but instead to incentivize consideration of fair lending compliance throughout decision-making processes. FHFA's stated intention not to create liability is consistent with proposed § 1293.1(c), which further states that ''[n]othing in this part creates a private right of action.'' FHFA also believes that a requirement to certify compliance would be consistent with the Enterprises' own practices in certifications required of seller/servicers[108] and HUD's practices in certifications required for grantees.[109] After consideration of the various alternatives proposed by the commenters, FHFA believes that qualifying the certification ''to the best of the certifier's knowledge and belief following reasonable or due inquiry of the certifying official'' adequately incentivizes compliance management efforts without creating an undue burden of certifying absolute compliance.

Accordingly, FHFA has revised § 1293.12(b) of the final rule by adding ''to the best of the certifier's knowledge and belief following reasonable or due inquiry of the certifying official'' to the certification of compliance. FHFA intends this revision to make clear that identification of a fair lending compliance risk following the completion of the certification does not on its own create liability for the regulated entity.

[100] *See* 12 CFR part 1236, Appendix: *Prudential Management Standards & Operations Standards 8, Overall Risk Management Processes; see also* 12 CFR 1239.4, *Duties and responsibilities of directors;* and 12 CFR 1239.12, *Compliance Program.*

[101] *See* 12 CFR 1239.4.(b)(4).

[102] FFIEC Uniform Interagency Consumer Compliance Rating System, at 21, *available at https://www.ffiec.gov/press/PDF/FFIEC_CCR_SystemFR_Notice.pdf.*

[103] *See* 12 CFR 1239.4(b)(4).

[104] 80 FR 72327, 723330 (Nov. 19, 2015).

[105] *Id.*

[106] *Id.* at 723331.

[107] *Meyer* v. *Holley,* 537 U.S. 280, 290–91 (2003).

[108] *See* Fannie Mae, Mortgage *Selling and Servicer Contract: Instructions to the Lender,* at 6 (July 2005), *available at https://singlefamily.fanniemae.com/media/35796/display;* Freddie Mac, *Seller/Service Guide Section 1301.2: Compliance with applicable law, available at https://guide.freddiemac.com/app/guide/section/1301.2.*

[109] *See* U.S. Department of Housing and Urban Development, Form 424–B: *Applicant and Recipient Assurances and Certifications* (Jan. 27, 2023), *available at https://www.hud.gov/sites/dfiles/OCHCO/documents/424-B.pdf.*

E. Mission-Specific Board Standards and Responsibilities

FHFA proposed to require an Enterprise's board of directors to consider mission goals, including the Equitable Housing Finance Plans, Duty to Serve Plans, and affordable housing goals, alongside other mission-related obligations in the board's oversight of the Enterprise and its business activities. FHFA received no comments on this proposal except for a comment requesting that an effective date for this section be ''in accordance with the APA.'' The effective date of this rule is 60 days from the date of its publication in the **Federal Register**, which is in accordance with the Administrative Procedure Act (APA). Accordingly, FHFA is adopting § 1293.26 of the final rule with no changes from the proposed rule.

F. Determination Not To Designate Enterprise Equitable Housing Finance Planning as a Prudential Management and Operations Standard

FHFA proposed the designation of the Equitable Housing Finance Planning subpart (proposed subpart C) as a Prudential Management and Operations Standard (''PMOS'' or ''prudential standard''). While some commenters supported a PMOS designation, most commenters did not support it, and suggesting it was an inappropriate use of PMOS authority. As discussed in the proposed rule preamble, FHFA proposed the PMOS designation because the Enterprise equitable housing finance planning framework is consistent with the Enterprises' authorizing statute obligations and FHFA's statutory charges related to ensuring the regulated entities operate consistent with the public interest and that FHFA furthers fair housing in its oversight of the regulated entities.[110] FHFA noted that the PMOS designation would provide FHFA access to section 4513b corrective measures, if necessary, to address deficiencies in equitable housing finance planning or implementation by an Enterprise.[111] FHFA has previously designated discretionary rules undertaken as part of its general rulemaking authority that are consistent with its authority and the mission of the Enterprises as PMOS.[112]

In response to comments and after reviewing existing PMOS guidelines and other FHFA supervisory and enforcement authorities, FHFA has determined not to designate this final rule as a Prudential Management and Operations Standard at this time. FHFA believes that this decision is responsive to concerns expressed by commenters, and that other existing supervisory and enforcement authorities should provide appropriate means to address any deficiencies by the Enterprises.

FHFA does disagree with the limited view of PMOS authority expressed by certain commenters, and notes that the Safety and Soundness Act is not limited to prudential safety and soundness standards.[113] The existing Prudential Management and Operations Standards established for the Enterprises cover a broad range of situations and acknowledge the Enterprises' mission to promote access to mortgage credit throughout the Nation.[114]

Moreover, the existing Prudential Management and Operations Standards contain several elements that could be relevant to components of equitable housing finance planning. For example, the prudential standards regarding adopting and implementing business strategies, policies, and procedures for boards and senior management may be relevant if FHFA determines the Enterprise failed to provide adequate resources or to establish appropriate controls to effectively execute business strategies, policies, or procedures related to the equitable housing finance planning requirements.[115] The prudential standards regarding internal controls and information systems may be relevant if FHFA determines an Enterprise failed to monitor the overall effectiveness of its internal controls and key risks on an ongoing basis and ensure that business units and internal and external audit teams conduct periodic evaluations related to the equitable housing finance planning requirements.[116] The prudential standards for independence and adequacy of internal audit systems may also be relevant if FHFA determines an Enterprise failed to conduct risk-based audits related to equitable housing finance planning, or an Enterprise's internal audit department failed to determine whether violations, findings, weaknesses, and other issues reported by FHFA with regard to the equitable housing finance planning have been promptly addressed.[117] Lastly, the prudential standard for the board and senior management to ensure an Enterprise's risk profile is aligned with its mission objectives and the prudential standard related to overall risk management and compliance with laws, regulations and supervisory guidance may be relevant if FHFA determined an Enterprise's equitable housing finance planning efforts did not reflect adherence to the authorizing statutes, the Fair Housing Act, the Equal Credit Opportunity Act, the requirements of the final rule, and other relevant guidance and regulations, and posed reputational or other material risks to the Enterprise.[118] Although FHFA is not designating any part of the final rule as a new PMOS, an Enterprise's failure to properly engage in equitable housing finance planning could result in a determination that it has failed to meet one or more of the existing PMOS, and must take corrective action.

FHFA continues to recognize the Enterprises' duty to overcome barriers to sustainable housing opportunities faced by one or more underserved communities through objectives, meaningful actions, and measurable goals, as outlined in the final rule, as an important component of their public interest mission and Charter Act obligation to promote access to mortgage credit throughout the Nation. In addition to the existing PMOS discussed above which may be relevant to ensure compliance by the Enterprises, the final rule provides that FHFA may enforce compliance in any manner and through any means within its authority, including but not limited to adverse examination findings or through supervision or enforcement under 12 U.S.C. 4511(b), 4513b, 4631, or 4636. Designation of the equitable housing finance planning requirements as a PMOS remains an option for future rulemaking based on experience FHFA gains in supervising and enforcing compliance with the final rule.

G. Determination Not To Define ''Equity''

FHFA asked commenters on the proposed rule whether ''equity'' should

[110] 88 FR 25293, 25299 (Apr. 26, 2023).

[111] *Id.*

[112] *See, e.g.,* 12 CFR 1242.1(b).

[113] *See* 12 U.S.C. 4513b(a).

[114] *See, e.g.,* 12 CFR part 1236, Appendix—Prudential Management and Operations Standards, Responsibilities of the Board of Directors and Senior Management, paragraph 10; Standard 4, paragraph 4; Standard 6, paragraph 4; Standard 7 (references to mission in paragraphs 2, 3, 4); Standard 8, paragraph 2.

[115] *See, e.g.,* 12 CFR part 1236, Appendix—Prudential Management and Operations Standards, Responsibilities of the Board of Directors and Senior Management, paragraphs 1, 5, and 6.

[116] *See, e.g.,* 12 U.S.C. 4513b(a)(1), 12 CFR part 1236, Appendix—Prudential Management and Operations Standards, Standard 1—Internal Controls and Information Systems, paragraph 14.

[117] *See* 12 U.S.C. 4513b(a)(2), 12 CFR part 1236, Appendix—Prudential Management and Operations Standards, Standard 2—Independence and Adequacy of Internal Audit Systems.

[118] *See* 12 U.S.C. 4513b(a)(8), 12 CFR part 1236, Appendix—Prudential Management and Operations Standards, Responsibilities of the Board of Directors and Senior Management, paragraph 10, and Standard 8—Overall Risk Management Processes, paragraph 12.

be defined in the rule. Most commenters supported FHFA defining ''equity'' in the regulatory text to prevent confusion and ensure the Enterprises take actions that promote the Agency's definition of ''equity.'' Two commenters argued that imposing an ''equity'' definition and requirements on the regulated entities is outside FHFA's statutory mission.

FHFA recognizes that a definition of ''equity'' has been explicitly provided in HUD's most recent proposed Affirmatively Furthering Fair Housing (AFFH) rule,[119] which would require equity plans from HUD program participants and which FHFA reviewed in developing the proposed and final rules given that both equity plans are grounded in the statutory requirement to affirmatively further fair housing.[120] According to a 2021 Presidential Memorandum, the AFFH mandate ''. . . is not only a mandate to refrain from discrimination but a mandate to take actions that undo historic patterns of segregation and other types of discrimination and that afford access to long-denied opportunities.'' [121] Executive Order 13985 defined ''equity'' for purposes of that order as ''the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.'' [122] The definition provided in HUD's proposed rule shares many similarities with the Executive Order 13985, but is not identical.

The proposed rule did not specifically define ''equity,'' but did include defined terms that would form the basis of the rule's requirements, informed by the concept of equity as it has been interpreted under the Fair Housing Act's affirmatively furthering statutory provision, the proposed AFFH rule, Presidential Memoranda, and Executive Orders noted above, as well as incorporating concepts to ensure consistency with FHFA's public interest duty and the Enterprises' Charter Act obligation to promote access to mortgage credit throughout the Nation. The proposed rule provides a concrete framework through which the Enterprises may work to promote sustainable housing opportunities for all homebuyers, homeowners, and tenants by taking meaningful actions under an ''equitable housing finance plan'' to overcome ''barriers'' faced by ''underserved communities'' throughout the country.[123] For example, the proposed rule's ''underserved community'' definition includes groups with a shared characteristic or geographic area that previously had or currently have difficulty accessing housing opportunities compared with groups of people without the shared characteristic or other areas.[124] The proposed rule defined ''barrier'' to refer to Enterprise actions, products, or policies, or aspects of the housing market that can reasonably be influenced by the Enterprise's actions, products, or policies, that contribute to inequitable housing opportunities and outcomes for underserved communities.[125] The ''equitable housing finance plan'' requires an Enterprise to identify barriers to sustainable housing opportunities faced by one or more underserved communities, and subsequently, establish objectives that demonstrate a focus to combat those identified barriers through the EHFP plan and the outcomes sought.[126]

FHFA believes the Equitable Housing Finance Planning program standards and provided definitions of ''underserved community,'' ''barrier,'' and ''equitable housing finance plan'' provide a clear framework for the Enterprises' work to advance the availability of mortgage credit and housing for all individuals. FHFA believes it is important to recognize there are many underserved communities throughout the nation, and it is important to understand each community's unique barriers, starting points, and access to opportunities that have been shaped by history and the present day. FHFA believes the proposed rule's approach provides a flexible and adaptable framework for addressing the needs of underserved communities that exist today, or that may arise in the future. Accordingly, consistent with the proposed rule, the final rule does not include a definition of ''equity.'' FHFA may consider issuing additional guidance or engaging in future rulemaking on this topic based on additional experience with the program and engagement with stakeholders.

H. Resource Disclosures

FHFA proposed a requirement in § 1293.23(b)(4) for the Enterprises to submit disclosures of resources dedicated to the Equitable Housing Finance Plans as part of their performance reports. Commenters who specifically addressed this issue opposed the proposed requirement. Some commenters expressed concerns about reputational risks, due to the high potential for subjectivity when different parties examine the same value. For example, consumer advocates may posit that the Enterprises' financial expenditures for meaningful actions are inadequate, while industry commenters may view the same value as an excessive and unnecessary expenditure. Other commenters suggested a financial disclosure requirement would be burdensome for the Enterprises and difficult to calculate accurately, as ''resources'' could be interpreted to include anything from closing cost credits to administrative costs.

Based on the comments, FHFA considered the requirement in the proposed rule as well as an alternative limited resource disclosure requirement and removing the requirement. The limited disclosure requirement would mandate the Enterprises to publish a summary of cost savings and benefits delivered to consumers for homeownership programs or products created pursuant to an Equitable Housing Finance Plan to support Enterprise accountability and transparency. However, concerns of subjectivity when interpreting any financial disclosures and whether financial disclosures are sufficient or excessive would still remain. Further, it could be difficult for the Enterprises to determine what monetary threshold constitutes sufficient resource dedication, and what constitutes a resource for Plan purposes, as some resources are not easily quantifiable or may be issued by a third party because of Enterprise efforts. Accordingly, for these reasons, FHFA has not included this alternative more limited financial disclosure requirement in the final rule.

FHFA finds the comments on the proposed financial disclosures requirement persuasive and has

[119] 88 FR 8516, 8558 (Feb. 9, 2023).

[120] *See* 42 U.S.C. 3608(d), 3608(e)(5). *See also* Executive Order 12892, *Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,* 59 FR 2939 (Jan. 20, 1994).

[121] *See* Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies (Jan. 26, 2021), *available at: https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/.* As acknowledged by the memorandum: ''[t]hroughout much of the 20th century, the Federal Government systematically supported discrimination and exclusion in housing and mortgage lending. While many of the Federal Government's housing policies and programs expanded homeownership across the country, many knowingly excluded Black people and other persons of color, and promoted and reinforced housing segregation. Federal policies contributed to mortgage redlining and lending discrimination against persons of color.''

[122] *See* Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* 86 FR 7009 (Jan. 25, 2021).

[123] *See* 12 CFR 1293.2.

[124] *Id.*

[125] *Id.*

[126] *See* 12 CFR 1293.2, 1293.22.

determined not to include that requirement in the final rule at this time. FHFA agrees with commenters that it can be difficult to fully and uniformly account for resource expenditures. In contrast to federal grant-making, the Enterprises provide support to underserved communities through the Equitable Housing Finance Plans through a variety of mechanisms. These mechanisms include both direct spending and indirect support, including but not limited to closing cost credits, special pricing, and policy enhancements. The Enterprises' indirect support can be difficult to quantify and compare across projects. Further, ''typical'' or customary costs may differ significantly across markets, resulting in aggregated data that does not provide meaningful insights and transparency. For these reasons, FHFA does not believe at this time that the potential burdens of the proposed rule provision or the alternative more limited disclosure requirement discussed above would be outweighed by the usefulness of information provided.

FHFA recognizes that although financial disclosures are one way to monitor program effectiveness and prioritization of housing equity, other performance metrics may better illustrate the impact of the Plans, including accept rate gaps, home loan acquisitions, and other performance metrics that are included in the Enterprises' performance reports.[127] Enterprise accountability can also be achieved through FHFA's Enterprise Fair Lending and Fair Housing Rating System (Rating System).[128] This Rating System will directly evaluate Enterprise impact, performance, public engagement, and overall commitment to addressing barriers to sustainable housing opportunities for underserved communities as part of FHFA's confidential supervisory ratings. Additionally, as discussed below, FHFA is also adopting a requirement in § 1293.27 of the final rule for a public narrative assessment of the Plans that will also contribute to Enterprise accountability and public transparency. FHFA may consider implementing a financial disclosure requirement in the future based on additional experience with the program and engagement with stakeholders.

I. Public Engagement

Proposed § 1293.24 included an annual public engagement requirement for FHFA, and a requirement for the Enterprises to consult with the public, including members of underserved communities and housing market participants, in the development and implementation of their Equitable Housing Finance Plans and updates, and describe such consultation in their Plans. The Enterprises' comments on the proposal requested additional instructions and flexibility for public engagement and input. Some other commenters were concerned that the absence of detailed public engagement requirements in the proposed rule could lead to inadequate public outreach and requested more rigorous requirements. One commenter recommended mandating the Enterprises provide several opportunities for input during the year via public meetings in each of the nine census divisions.

Although FHFA agrees that the Enterprises should provide ongoing opportunities for public engagement, FHFA does not believe the rule should state specific requirements for the Enterprises' public engagement because it may cause the Enterprises to limit public engagement efforts only to those specified in the rule and may otherwise inhibit flexibility in how public engagement is achieved. FHFA also believes mandating Enterprise engagement by census division is inappropriate at this time, as the census divisions are not prominently known to the public and may be unduly burdensome for the Enterprises, due to the additional resources necessary to employ multiple meetings in the various census divisions across the country, and subsequently, incorporate the public input in their EHFP reports each year before the September 30 due date.

Making this provision too prescriptive could have the unintended consequence of hindering an Enterprise's innovative and flexible ways of engaging with the public. Due to the specifics of the final rule, the underserved communities and barriers addressed with meaningful actions will continuously change, and the program standards must be flexible enough to allow for that. FHFA expects that the Enterprises would seek feedback from stakeholder groups about how best to design their Plans. Affording flexibility regarding public engagement will allow for more focused and targeted Plans based on specific Enterprise public outreach efforts, which must be described in the Plan as part of the public engagement requirement. Accordingly, FHFA has not implemented any changes to the public engagement requirements in this final rule. FHFA may provide further guidance on the adequacy of public engagement in the future based on additional experience with the program and engagement with stakeholders.

J. Program Evaluation

FHFA asked commenters on the proposed rule whether an evaluation of the Enterprises' equitable housing performance should be publicly issued, or whether evaluation metrics should be included in the Enterprises' public performance reports. Commenters generally supported FHFA publishing an evaluative narrative to facilitate constructive public input and increase Enterprise transparency and accountability. Two commenters suggested the Enterprises should granularly disclose the success or failure of reports, and provide full reporting on all Enterprise pilot programs at the local level.

FHFA's Rating System assesses the Enterprises' compliance with fair lending and fair housing standards and their planning and execution with respect to Equitable Housing Finance Plans.[129] One of the four rating components is equitable housing finance, which measures the performance of each Enterprise under its Equitable Housing Finance Plan activities. The Rating System complements other existing FHFA supervisory rating systems used by FHFA's Division of Bank Regulation, Division of Enterprise Regulation, and Office of Minority and Women Inclusion.[130] FHFA generally prohibits disclosure of non-public Agency information.[131] Supervisory ratings are generally confidential supervisory information and have not historically been publicly disclosed in order to encourage greater candor, cooperation, and compliance by the regulated entity. One exception to this general policy in financial regulation is the disclosure of Community Reinvestment Act (CRA) ratings.[132]

As part of evaluating comments on this issue, FHFA considered disclosing the supervisory ratings, disclosing a narrative assessment of the equitable housing finance component, and

[127] *See* 12 CFR 1293.23.

[128] *See* Advisory Bulletin AB 2023–05: *Enterprise Fair Lending and Fair Housing Rating System* (September 27, 2023), *available at https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/Pages/AB_2023-05_Enterprise-Fair-Lending-and-Fair-Housing-Rating-System.aspx.*

[129] *Id.*

[130] *See* Advisory Bulletin AB 2012–03: *FHFA Examination Rating System* (December 19, 2012), *available at https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/Pages/AB-2012-03-FHFA-EXAMINATION-RATING-SYSTEM.aspx.*

[131] *See* 12 CFR part 1214, from 78 FR 39957, 39958 (July 3, 2013).

[132] *See https://www.ffiec.gov/craratings/.*

developing separate public evaluation metrics. FHFA believes that maintaining the confidential supervisory nature of the ratings under the Rating System, including the equitable housing finance component, is most consistent with agency policy of maintaining confidentiality of supervisory information. While FHFA considered public evaluation metrics similar to those provided under the Duty to Serve program,[133] FHFA believes that implementation of two separate evaluation systems—one internal to FHFA and one public-facing—to assess the equitable housing finance program metrics would likely create implementation challenges for FHFA and the Enterprises. However, FHFA does agree with the commenters that favored some form of public evaluation and has added a provision in § 1293.27 of the final rule requiring FHFA to publish a narrative evaluative assessment of each Enterprise's program performance. FHFA believes this change will foster greater public transparency and Enterprise accountability, while reducing the burden associated with developing separate public evaluation metrics. This provision requires FHFA, by May 15 of each year, to publish on its website a narrative assessment evaluating each Enterprise's performance under its respective Equitable Housing Finance Plans. This requirement will also provide greater alignment of the Equitable Housing Finance Program with the CRA, though FHFA acknowledges the CRA examinations ratings disclosures are more extensive.

K. Reporting on Bank Voluntary Actions To Address Barriers to Sustainable Housing Opportunities

FHFA asked commenters on the proposed rule whether the Banks should be required to comply with the same Equitable Housing Finance Planning requirements as the Enterprises, including submission of Equitable Housing Finance Plans. Some commenters suggested that imposing such requirements on the Banks would be too burdensome and unnecessary, stating that the Banks' Affordable Housing Programs and Community Investment Programs already address the needs of underserved communities.[134] Several other commenters requested that FHFA ensure the Banks do more to promote fair and affordable housing by determining appropriate mechanisms and structures to assess the Banks' equity efforts. The regulated entities' comments emphasized the differences between the Enterprises and the Banks, including contrasts in acquisition volume, market share, and the Banks' issuance of advances to their members.

FHFA believes addressing barriers to sustainable housing opportunities for underserved communities should be a priority for all its regulated entities and, after considering comments requesting appropriate mechanisms for the Banks, FHFA is adopting a requirement in the final rule for the Banks to report any voluntary meaningful actions taken to further equity in the past year. FHFA expects to engage in future guidance and rulemaking specific to the Banks, in response to and consistent with ''The Federal Home Loan Bank System at 100: Focusing on the Future'' Report. Although FHFA recognizes the Banks' activities have less influence on aspects of the housing market in comparison to the Enterprises' activities, FHFA believes addressing barriers to sustainable housing opportunities should be a priority for all regulated entities and is consistent with the public interest and acknowledges commenters' requests for FHFA to develop appropriate mechanisms for the Banks. FHFA recognizes that equitable housing finance planning requires time, effort, and financial and administrative resources from the Enterprises, which may not be feasible for the Banks to provide at the same level, considering the difference in their resources. Therefore, consistent with the proposed rule, the final rule does not adopt the equitable housing finance planning requirements for the Banks, but requires instead the reporting of voluntary meaningful Bank efforts for addressing barriers to sustainable housing opportunities in new subpart D.

This addition recognizes the importance of equitable housing finance planning for all regulated entities, while also recognizing the differences between the Banks and the Enterprises and providing FHFA and stakeholders additional time and information to further refine any potential future requirements for the Banks. FHFA has determined that a delayed effective date for this subpart is appropriate, considering the differences between the Banks and the Enterprises and that the Enterprises are conforming to similar requirements already. Subpart D will be effective on February 15, 2026.

L. Data Collection

The proposed rule included codification, in substantially similar form, of the existing FHFA policy under which the Enterprises collect data on (a) housing counseling and homeownership education, and (b) the language preference of mortgage applicants and borrowers. An Enterprise requested clarification of the proposed housing counseling data collection requirement. Commenters on the proposed rule generally supported codifying the data collection requirements for collecting language preference and data regarding completion of housing counseling and homeownership courses, though some commenters did not support the requirement. Some commenters provided suggestions for future policies that would support limited English proficient (LEP) communities. Additionally, the proposed requirement is substantially the same as the policy announced by FHFA in May 2022 mandating lender use of the Supplemental Consumer Information Form (SCIF) as part of the application process for loans that will be sold to the Enterprises.[135]

FHFA believes that the data collected on language preference, homeownership education, and housing counseling for applicants and borrowers will support efforts to promote sustainable housing opportunities for underserved communities and could underlie elements of future Equitable Housing Finance Plans. FHFA is adopting the proposed rule text without change in the final rule and believes that it should not require any additional resources from the regulated entities or market participants given the existing policy.

As noted above, an Enterprise requested clarification of the proposed housing counseling data collection requirement. At this time, the Enterprises' SCIF instructions require lenders to provide an opportunity for the borrower to indicate a language preference or that they would prefer not to respond.[136] The instructions require completion of the housing counseling and homeownership education section if housing counseling or homeownership education is required by an Enterprise's loan program.[137] The housing counseling and homeownership section may also be voluntarily completed by the borrower even if housing counseling or homeownership

[133] *See* 12 CFR part 1282, subpart C (Duty to Serve).

[134] *See* 12 CFR parts 1291, 1292.

[135] *See* FHFA Announces Mandatory Use of the Supplemental Consumer Information Form (May 3, 2022), *available at https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Mandatory-Use-of-the-Supplemental-Consumer-Information-Form.aspx.*

[136] *See* Fannie Mae and Freddie Mac, Instructions for Completing the Supplemental Consumer Information Form (SCIF), *available at https://sf.freddiemac.com/docs/pdf/press-release/july-6-2022-gse-scif-announcement.pdf.*

[137] *Id.*

education was not required by a loan program, and analysis of current data indicates that voluntary data is being provided in some circumstances.[138] FHFA did not intend to change the existing policy or instructions as part of the proposed rule, which was intended to codify the existing policy and practice. FHFA believes that the instructions and current practice comply with the proposed and final rule text. FHFA appreciates the comments provided on future LEP policy, but based on the scope of the final rule, is not addressing them in the final rule.

M. Authority and Consistency With Law

Some commenters on the proposed rule questioned FHFA's authority to codify the equitable housing finance plan program in regulation and the consistency of the proposed rule with the U.S. Constitution and law. FHFA's rulemaking authority is discussed and set forth throughout both the proposed rule preamble and the final rule preamble but is summarized below in response to the concerns raised by these commenters.

FHFA's Rulemaking Authority. FHFA's authority under the Safety and Soundness Act includes exercising general regulatory authority to ensure the purposes of the Safety and Soundness Act, the authorizing statutes, and other applicable laws are carried out.[139] FHFA's authority also includes the authority to exercise incidental powers that may be necessary or appropriate to fulfill the duties and responsibilities of the Agency.[140] In addition, FHFA's authority includes issuing regulations necessary to carry out the duties of the Agency and ensure the purposes of the Safety and Soundness Act and the authorizing statutes are accomplished.[141]

This final rule's subject matter is well supported by the core purposes and duties of the Agency found in the Safety and Soundness Act, including Congress's finding that the regulated entities have important public missions,[142] the duty of the Agency to ensure the regulated entities operate in the public interest,[143] and the duty to ensure the purposes of applicable law (including the Fair Housing Act, the Equal Credit Opportunity Act, and the FTC Act's prohibition on unfair or deceptive acts or practices) are carried out,[144] as well as the Enterprises' chartered purposes (including promoting access to mortgage credit throughout the Nation).[145] FHFA also has an overarching obligation to affirmatively further fair housing in exercising these authorities and understanding the public missions set forth in relevant statutes.[146] Other parts of the relevant statutes also make clear the connection that equitable housing finance, fair housing, and fair lending have to FHFA's statutory authority and duties and responsibilities. These include the requirement for the Enterprises to assess and report on aspects of their operations that cause disparities and actions taken to promote fair lending,[147] the requirement for FHFA to obtain data on pricing disparities from the Enterprises and refer lenders for fair lending purposes,[148] and the requirement for the Enterprises to take affirmative steps to assist the primary market in making housing credit available in areas with concentrations of low-income and minority families.[149] Finally, data collection and reporting requirements [150] and other mission-related obligations of FHFA and the Enterprises speak more generally about the need to promote sustainable housing opportunities.[151]

HUD and FHFA's Fair Housing Responsibility. Some commenters asserted that fair housing and fair lending with respect to the Enterprises are solely HUD's responsibility, because 12 U.S.C. 4545 directs the Secretary of HUD to take certain actions related to fair housing and the Enterprises.[152] This provision does not mean that FHFA is not responsible for overseeing fair housing and fair lending compliance at the Enterprises. In addition to HUD's authority and FHFA's supervisory authority, FHFA is empowered to initiate enforcement actions for Enterprise violations of 12 U.S.C. 4545 and HUD's implementing regulations under the Safety and Soundness Act.[153] FHFA has a responsibility to use its authority to further fair housing, and FHFA's oversight of its regulated entities for fair lending and fair housing is consistent with that of other Federal financial regulators.[154]

Equal Protection and Strict Scrutiny. Some commenters asserted that the rule would be illegal under the Equal Protection Clause. FHFA disagrees. The final rule sets forth a strategic planning, public input, and public reporting process for addressing the needs of underserved communities, which will necessarily vary over time. The term ''underserved community'' is defined broadly to encompass many different types of communities, including communities that do not share any particular race or ethnicity, and the rule does not impose any requirement to take actions that are racially restricted. Further, the Plans merely provide public transparency into the Enterprise's analyses, the barriers experienced by that underserved community, and actions the Enterprises intends to take to attempt to overcome those barriers. Any such actions are subject to fair lending and fair housing laws, including the Equal Credit Opportunity Act and the Fair Housing Act, which generally prohibit discrimination based on prohibited characteristics with limited exceptions (which include special purpose credit programs). This final rule specifies that unlawful actions are not permitted in several provisions, including §§ 1293.1(b), 1293.11(a), (b), 1293.12(b), 1293.22(f)(2), (g), 1293.23(d)(2), and 1293.32(d)(2). Current Equitable Housing Finance Plan reports demonstrate that actions taken under the current Plans, which identify Black and Latino communities as underserved communities, benefit applicants, borrowers, and renters of all races.[155] To

[138] *Id.*

[139] 12 U.S.C. 4511(b).

[140] 12 U.S.C. 4513(a)(2)(B).

[141] 12 U.S.C. 4526. FHFA also has explicit authority to require the regulated entities to submit regular and special reports on a range of topics, 12 U.S.C. 4514.

[142] 12 U.S.C. 4501.

[143] 12 U.S.C. 4513.

[144] 12 U.S.C. 4511(b).

[145] 12 U.S.C. 1716(4) and 12 U.S.C. 1451 note (b)(4); *see also* 12 U.S.C. 1716(3) and 12 U.S.C. 1451 note (b)(3).

[146] 42 U.S.C. 3608(d); *see also* 12 U.S.C. 4513(a).

[147] 12 U.S.C. 1723a(n)(2)(G) and 12 U.S.C. 1456(f)(2)(G).

[148] 12 U.S.C. 4561(d)(1).

[149] 12 U.S.C. 4565(b)(3)(A). Some commenters asserted this language should be interpreted only to authorize actions that target areas that are both low-income concentrated and minority concentrated. FHFA does not believe this is a reasonable interpretation of the statute. Applying the commenters' reading to the section 4565 as a whole makes clear that it is not a reasonable reading, as there are numerous categories which are joined by ''and'' which are mutually exclusive or clear from the context that they are not intended to be joined requirements which must all be satisfied simultaneously by individual actions. Regardless, the final rule does not rest solely on this provision.

[150] 12 U.S.C. 1723a(m)(1) and 12 U.S.C. 1456(e)(1); 12 U.S.C. 4544(b).

[151] *See* 12 U.S.C. 4561(a), 4562, and 4563 (Enterprise affordable housing goals); 12 CFR part 1282, subpart B (housing goals); 12 U.S.C. 4565 (Enterprise Duty to Serve affordable housing needs of certain underserved markets); 12 CFR part 1282, subpart C (Duty to Serve).

[152] *See* 12 U.S.C. 4545.

[153] *See* 59 FR 18266 (Apr. 15, 1994); 86 FR 36199 (July 9, 2021); HUD–FHFA Memorandum of Understanding Regarding Fair Housing and Fair Lending Coordination (Aug. 12, 2021), *available at https://www.hud.gov/sites/dfiles/PA/documents/FHFA-HUD-MOU_8122021.pdf.*

[154] *See* 42 U.S.C. 3608(d).

[155] *See* Freddie Mac, 2022 Equitable Housing Finance Plan Performance Report, *available at*

the extent that any specific activity undertaken or proposed to be undertaken by the Enterprises raised concerns of Constitutional or other legal compliance, FHFA's supervisory and enforcement authority described in the final rule, combined with the public input and public reporting processes in the final rule, provide means to address concerns with specific activities.

The Major Questions Doctrine. Some commenters asserted that the rule would not be consistent with the U.S. Supreme Court's ''major questions'' doctrine.[156] FHFA disagrees. The final rule is not a sweeping change either with respect to oversight of the regulated entities or with respect to the equitable housing finance plan program. Much of the content of the final rule codifies existing policy. Further, the final rule is consistent with FHFA's core statutory purposes as discussed above. With respect to equitable housing finance as well as other aspects, the final rule does not impose changes of vast economic or political significance. It requires a strategic planning process supported by broad stakeholder input and program standards to more effectively achieve FHFA's and the Enterprises' public mission, in concert with other FHFA programs and requirements. It also includes guardrails and processes for self-correction to ensure activities remain consistent with the law and the Enterprises' Congressionally chartered purposes and that FHFA's oversight remains within the bounds of the law and the Constitution.

III. Summary of Changes in the Final Rule

A. Section 1293.1(d), Severability Clause

FHFA has added a severability clause in § 1293.1(d) of the final rule. FHFA believes that it is appropriate to make clear its intention in the final rule that all provisions of the final rule be severable given that the final rule contains many thematically related but ultimately independent regulatory requirements, each of which FHFA believes is independently important to pursue through rulemaking and can function independently.

B. Section 1293.12(a), Reports, Data, and Certification

FHFA has added a reference to § 1293.11(b) in § 1293.12(a) of the final rule to make clear that reports to FHFA may be required to include matters related to UDAP compliance, consistent with the certification attached to the report required in § 1293.12(b). FHFA has also changed the title of subpart B to include UDAP.

C. Section 1293.12, Certification of Compliance

FHFA has revised § 1293.12(b) in the final rule by qualifying the required certification of compliance with fair lending, fair housing, and UDAP laws ''to the best of the certifier's knowledge and belief following reasonable or due inquiry of the certifying official.'' FHFA determined that certifying compliance to the best of the certifier's knowledge and belief will adequately incentivize identification of risk without imposing additional liability for certifying to absolute compliance.

D. Section 1293.21, General

FHFA has not included in the final rule the proposed rule provision that would have identified Enterprise Equitable Housing Finance Planning as a prudential standard by regulation pursuant to section 4513(b) of the Safety and Soundness Act. Accordingly, the title of § 1293.21 has changed to remove ''Identification of subpart as a prudential standard,'' and now states ''General'' only. Based on comments received, FHFA determined it is not necessary to designate this rule as a prudential standard at this time. FHFA acknowledges that Enterprise failure to adhere to EHFP program standards can be addressed by other enforcement and supervision methods, and certain deficiencies may also be failures to meet existing PMOS standards that may trigger corrective action pursuant to section 4513(b) of the Safety and Soundness Act and 12 CFR part 1236.

E. Section 1293.23, Resource Disclosures, Additions, and Clarifying Edits

In response to comments, FHFA has not included in the final rule proposed § 1293.23(b)(4), which would have required the Enterprises to submit a summary of the value of resources dedicated to supporting the outcomes categorized by type of activity and a summary of additional value of resources contributed from third parties because of the Enterprise's support of the outcomes. Instead, Enterprise accountability will be evaluated by FHFA's Rating System and performance metrics, including but not limited to accept rate gaps and home loan acquisitions. The Rating System will assess Enterprise reports, performance, and overall commitment to equity. FHFA also may consider implementing a financial disclosure requirement in a future rule and will examine the Enterprises' equitable housing finance planning under the rule.

FHFA has made additions and clarifying edits to § 1293.23 in the final rule, including distinguishing between multifamily and single-family acquisition reporting, adding neighborhood race and ethnicity reporting where appropriate, adding narrative description requirements for the underwriting sections of the performance reports, adding a separate reporting requirement for all homeownership programs to facilitate better comparison between the Enterprises, and clarifying that FHFA may use its order authority under 12 U.S.C. 4514 to establish requirements for reporting.

F. Section 1293.27, Program Evaluation

In response to comments, FHFA has added § 1293.27 ''Program Evaluation'' in the final rule, which provides that FHFA will publish on its website a narrative assessment evaluating each Enterprise's performance under its respective Equitable Housing Finance Planning program standards by May 15 of each year. FHFA believes this change will foster greater public transparency and Enterprise accountability, while reducing burden and complexity associated with developing separate evaluation metrics for public consumption. It will also further align the Equitable Housing Finance Program with the Community Reinvestment Act, in that both programs require review and public disclosure by their respective agencies of the performance of the entities they regulate.

G. Section 1293.31, Federal Home Loan Bank Equitable Housing Finance Planning

In response to comments, FHFA has added a new Subpart D—Federal Home Loan Bank Equitable Housing Finance Planning in the final rule, requiring the Banks to report on any meaningful actions voluntarily taken to support underserved communities and such actions currently planned for the coming year, or to provide a public notice that it has not taken any voluntary actions and does not currently have any such voluntary meaningful actions planned for the coming year. This requirement recognizes the importance of addressing barriers to

https://www.freddiemac.com/about/pdf/Freddie-Mac-Equitable-Housing-Finance-Plan-2022-Performance-Report.pdf; Fannie Mae, 2022 Equitable Housing Finance Plan Performance Report, available at *https://www.fanniemae.com/media/46616/display.*

[156] *See, e.g., West Virginia* v. *EPA,* 142 S. Ct. 2587 (June 30, 2022).

sustainable housing for all regulated entities, while also recognizing and considering the differences between the Banks and Enterprises. FHFA may engage in future rulemaking and guidance specific to the Banks regarding equitable housing finance planning.

IV. Consideration of Differences Between the Banks and the Enterprises

Under the final rule, both the Enterprises and the Banks would be subject to subpart A (§§ 1293.1 through 1293.3) and subpart B (§§ 1293.11 through 1293.12), including general provisions related to fair housing and fair lending laws, compliance, examinations, oversight, and enforcement. Additionally, both the Banks and the Enterprises would be covered by FHFA's authority to require regular and special reports and the requirement to certify compliance in regular reports. However, FHFA has not currently issued any reporting orders requiring regular or special fair housing and fair lending reports from the Banks. The Equitable Housing Finance Plan and broader equitable housing finance planning requirements described specifically in subpart C (§§ 1293.21 through 1293.26) would apply only to the Enterprises and would codify in regulation, and expand on, the existing equitable housing framework for the Enterprises that FHFA previously established. In response to comments, FHFA has added subpart D in the final rule which requires the Banks to report on any voluntary equitable housing finance actions taken or planned but does not require any actions by the Banks other than the reports or notices that there are no actions to report. Subpart E (§ 1293.41) could include data collection and reporting requirements that would apply to both the Enterprises and the Banks, but currently the requirements would apply only to the Enterprises.

When promulgating any regulation that may have future effect relating to the Banks, the Director is required by section 1313(f) of the Safety and Soundness Act to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability.[157] FHFA requested comments from the public about whether differences related to these factors should result in a revision of the proposed rule as it relates to the Banks. FHFA's adoption of new subpart D in the final rule reflects its consideration of the comments and appropriate consideration of the differences between the Banks and the Enterprises. The Director considered the differences between the Banks and the Enterprises, as they relate to the above factors, and determined that this final rule is appropriate.

[157] 12 U.S.C. 4513(f).

V. Regulatory Analyses

A. Paperwork Reduction Act

The final rule does not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities must include an analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act. FHFA certifies that the final rule will not have a significant economic impact on a substantial number of small entities because the regulation applies only to the Enterprises and the Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

C. Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801 *et seq.*), FHFA has determined that this final rule is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects for 12 CFR Part 1293

Fair housing, Federal home loan banks, Government-sponsored enterprises, Mortgages, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Housing Finance Agency amends chapter XII in title 12 of the Code of Federal Regulations, as follows:

■ 1. Add part 1293 to read as follows:

PART 1293—FAIR LENDING OVERSIGHT AND EQUITABLE HOUSING FINANCE

Subpart A—General

Sec.
1293.1 General.
1293.2 Definitions.
1293.3 Compliance and enforcement.
1293.4 Preservation of authority.
1293.5–1293.10 [Reserved]

Subpart B—Fair Housing, Fair Lending, and Unfair or Deceptive Acts or Practices Compliance

1293.11 Regulated entity compliance.
1293.12 Reports, data, and certifications.
1293.13–1293.20 [Reserved]

Subpart C—Enterprise Equitable Housing Finance Planning

1293.21 General.
1293.22 Equitable housing finance plans and updates.
1293.23 Performance reports.
1293.24 Public engagement.
1293.25 Program requirements.
1293.26 Enterprise board equitable housing and mission responsibilities.
1293.27 Program evaluation.
1293.28–1293.30 [Reserved]

Subpart D—[Reserved]

Subpart E—Data Collection

1293.41 Required Enterprise data collection and reporting.

Authority: 12 U.S.C. 1456(c)(1); 12 U.S.C. 1723a(m)(1); 12 U.S.C. 4511; 12 U.S.C. 4513; 12 U.S.C. 4514; 12 U.S.C. 4517; 12 U.S.C. 4526; 42 U.S.C. 3608(d).

Subpart A—General

§ 1293.1 General.

(a) This part sets forth requirements related to fair lending oversight of regulated entities, equitable housing finance planning by the Enterprises, and certain data collection and reporting by the regulated entities.

(b) Nothing in this part permits or requires a regulated entity to engage in any activity that would otherwise be inconsistent with the Safety and Soundness Act, the authorizing statutes, or other applicable law.

(c) Nothing in this part creates a private right of action.

(d) If any provision of this part, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue in effect.

§ 1293.2 Definitions.

For purposes of this part:

Annual plan update (update) means a public update to an Equitable Housing Finance Plan for the second or third year of a planning cycle.

Barrier means an element 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.

Equitable Housing Finance Plan (plan) means a three-year public plan developed with public engagement and adopted by each Enterprise describing how each Enterprise will overcome barriers to sustainable housing opportunities faced by one or more underserved communities through objectives, meaningful actions, and measurable goals.

Fair housing and fair lending laws means the Fair Housing Act, the Equal Credit Opportunity Act, and implementing regulations. Additionally, with respect to an Enterprise, it means 12 U.S.C. 4545 and implementing regulations.

Performance report (report) means an annual public report by an Enterprise on its performance under its Equitable Housing Finance Plan and other information on equitable housing and fair lending that meets the requirements of § 1293.23 and any other FHFA requirements.

Sustainable housing opportunity means a rental or homeownership opportunity that includes one or more characteristics important to the needs of a tenant or homeowner. These characteristics include but are not limited to: being affordable to obtain and sustain; relating to a dwelling that meets basic habitability requirements and is reasonably able to withstand natural disasters or other climate-related impact events; relating to a dwelling that is improving the quality of housing stock in an area; being located in an area with access to educational, transportation, economic, and other important opportunities, including community assets; being accessible for persons with disabilities and available in the most integrated setting appropriate to the needs of an individual with a disability; not placing the tenant or homeowner in a position where they are unlikely to succeed in sustaining the housing opportunity over the long term; and providing reasonable opportunities to accommodate hardships by the renter or homeowner to allow continuation of the housing opportunity.

Underserved community is 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, historically has received or currently receives a lower share of the benefits of Enterprise programs and activities providing sustainable housing opportunities, or that otherwise has had difficulty accessing these benefits compared with groups of people without the shared characteristic or other areas. Shared characteristics include but are not limited to characteristics protected by fair housing and fair lending laws applicable to the Enterprises including race, color, religion, sex (including actual or perceived sexual orientation or gender identity), familial status, national origin, disability, marital status, age, receipt of public assistance income, exercise of rights protected by the Consumer Credit Protection Act, exercise of rights protected by the Fair Housing Act, dwelling age, dwelling location, and neighborhood age. Examples of underserved communities, if supported by adequate information in a plan pursuant to § 1293.25, include: the Commonwealth of Puerto Rico, single parents, persons with disabilities, women of color, seniors with fixed income, self-employed individuals, individuals with limited mainstream credit and banking history, counties which have historically received a lower share of the benefits of Enterprise programs and activities, individuals with income variance such as skilled tradespeople or those that receive income through commission, persons with limited English proficiency, and multigenerational households.

§ 1293.3 Compliance and enforcement.

FHFA may enforce compliance with this part in any manner and through any means within its authority, including but not limited to adverse examination findings or through supervision or enforcement under 12 U.S.C. 4511(b), 4513b, 4631, or 4636. The agency may conduct examinations of a regulated entity's activities related to this part pursuant to 12 U.S.C. 4517.

§ 1293.4 Preservation of authority.

Nothing in this part in any way limits the authority of the Federal Housing Finance Agency under other provisions of applicable law and regulations.

§§ 1293.5–1293.10 [Reserved]

Subpart B—Fair Housing, Fair Lending, and Unfair or Deceptive Acts or Practices Compliance

§ 1293.11 Regulated entity compliance.

(a) *Compliance with fair housing and fair lending laws.* Regulated entities must comply with fair housing and fair lending laws.

(b) *Compliance with prohibition on unfair or deceptive acts or practices.* Regulated entities must comply with the prohibition on unfair or deceptive acts or practices under 15 U.S.C. 45.

(c) *Responsibilities of boards of directors.* In accordance with § 1239.4(b)(4) of this chapter, directors of a regulated entity 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 under 15 U.S.C. 45, including by appropriately considering compliance with fair housing and fair lending laws and the prohibition on unfair or deceptive acts or practices under 15 U.S.C. 45 in the oversight of the regulated entity and its business activities.

§ 1293.12 Reports, data, and certifications.

(a) *Reports.* FHFA may require the regulated entities to submit to FHFA regular and special reports concerning fair housing, fair lending, and compliance with § 1293.11(b) including the provision of data pursuant to FHFA instructions.

(b) *Certifications.* Each regular report concerning fair housing and fair lending shall include a certification of the regulated entity's compliance with fair housing and fair lending laws and with § 1293.11(b) to the best of the certifier's knowledge and belief following reasonable or due inquiry of the certifying official in addition to any other required certification or declaration (such as a declaration under 12 U.S.C. 4514(a)(4)).

§§ 1293.13–1293.20 [Reserved]

Subpart C—Enterprise Equitable Housing Finance Planning

§ 1293.21 General.

(a) This subpart sets forth the Enterprise duty to engage in equitable housing finance planning and to take meaningful actions to support underserved communities, and establishes standards and procedures related to public engagement and FHFA's oversight of the Enterprises' planning and actions.

(b) If a date provided in this subpart falls on a day that is not a business day, the date required shall be the next business day.

(c) Submission and publication dates provided in this subpart may be changed by the Director, as determined appropriate, by public order for a particular required submission or publication.

(d) Plans and reports under this subpart are reports required under 12 U.S.C. 4514(a) and therefore must include a notice and declaration in compliance with 12 U.S.C. 4514(a)(4).

§ 1293.22 Equitable housing finance plans and updates.

(a) *General.* Every three years each Enterprise shall adopt an Equitable Housing Finance Plan covering a three-year period. Each Enterprise may adopt a public annual plan update to that plan for the second and third years of the plan.

(b) *Contents of plan.* The plan shall include:

(1) Identification of barriers to sustainable housing opportunities faced by one or more underserved communities;

(2) Objectives that establish the overall direction and focus for the plan by defining the outcomes the plan seeks to accomplish, and that are logically tied to one or more identified barriers;

(3) Meaningful actions (actions) describing the high-impact activities the Enterprise intends to undertake to further the identified objectives that span one or more years (including extending beyond the period covered by the plan);

(4) Specific, measurable, and time-bound goals (goals) for each action; and

(5) Summaries of the Enterprise's public engagement in developing the plan.

(c) *Plan submission.* Each Enterprise shall submit its Plan to FHFA for review on or before September 30 of the year prior to the first year covered by the Plan.

(d) *Contents of annual plan update.* If an Enterprise chooses to submit an update, it shall include all changes the Enterprise is making to its plan, including any changes in identified barriers, objectives, meaningful actions, specific, measurable, and time-bound goals, and a summary of any additional public engagement. The update shall clearly describe the specific reason(s) for each significant change to the plan.

(e) *Annual update submission.* If an Enterprise chooses to submit an update, it shall submit its update for FHFA review on or before February 15 of the year covered by the update.

(f) *FHFA review.* FHFA shall review each plan and update and, prior to publication, may:

(1) Require removal of any confidential or proprietary information;

(2) Require removal of any content that is not consistent with this part, the Safety and Soundness Act, the authorizing statutes, or other applicable law; and

(3) Provide any feedback for consideration.

(g) *No prior approval of activities.* FHFA's review does not constitute a prior approval of a plan or update or any action described therein. All actions included in a plan are subject to all applicable FHFA and other requirements and authorities.

(h) *Disclaimer included in plan and annual update.* The plan and the annual update must include disclaimer language indicating the implementation of actions may be subject to change based on certain factors.

(i) *Plan and update publication.* Each Enterprise shall publish its plan on its website on January 15 of the first year covered by the plan and maintain it thereafter. Each Enterprise shall publish any update on its website on April 15 of the second and third year covered by the plan and maintain it thereafter. Each Enterprise shall ensure that plans and updates are accessible to persons with disabilities.

(j) *Additional guidance.* From time to time, FHFA may issue public guidance on plans and updates.

§ 1293.23 Performance reports.

(a) *General.* Annually, each Enterprise shall publicly report on its plan progress and provide other information related to equitable housing and fair housing and fair lending for the prior year in a performance report.

(b) *Contents of the report.* The report shall contain, at a minimum:

(1) A narrative assessment consisting of a review of major successes and key accomplishments, as well as lessons learned and challenges experienced;

(2) Plan performance details for each objective, meaningful action, measurable goal, including outcome-based metrics;

(3) A summary of outcomes for the year categorized by type of activity and by race and ethnicity group and underserved community group (if available);

(4) A summary of outcomes for the year for homeownership programs or products created pursuant to the Plan by race and ethnicity group and underserved community group (if available);

(5) An assessment of the Enterprise's underwriting that includes:

(i) For the applicable year and the preceding three years, the accept rates for the Enterprise's automated underwriting system categorized by home purchase, rate-term refinancing, cash-out refinancing and by race and ethnicity group and by underserved community group (if available);

(ii) For the applicable year and the preceding three years, the Enterprise's single-family loan acquisitions categorized by home purchase, rate-term refinancing, cash-out refinancing, and by race and ethnicity group, neighborhood race and ethnicity, and underserved community group (if available);

(iii) For the applicable year and the preceding three years, the Enterprise's multifamily loan acquisitions categorized by neighborhood race and ethnicity;

(iv) A narrative description of paragraphs (b)(5)(i)through (iii) of this section; and

(v) A narrative assessment of any innovations in automated underwriting or other policy taken during the applicable year and any future planned work intended to address identified disparities.

(c) *Report submission.* Each Enterprise shall submit its report to FHFA for review on or before February 15 annually.

(d) *FHFA review.* FHFA shall review each report and, prior to publication, may:

(1) Require removal of any confidential or proprietary information;

(2) Require removal of any content that is not consistent with this part, the Safety and Soundness Act, the authorizing statutes, or other applicable law; and

(3) Provide any feedback for consideration.

(e) *Report publication.* Each Enterprise shall publish its report on its website on April 15 annually and maintain it thereafter. Each Enterprise shall ensure that reports are accessible to persons with disabilities.

(f) *Additional requirements and guidance.* FHFA may require additional information to be included in reports through other FHFA authorities, such as an order under 12 U.S.C. 4514. From time to time, FHFA may issue public guidance on reports.

§ 1293.24 Public engagement.

(a) *FHFA public engagement.* On or before June 15 annually, 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.

(b) *Enterprise consultation.* The Enterprises shall consult with stakeholders, including members of underserved communities and housing market participants, in the development and implementation of their plans and updates.

§ 1293.25 Program requirements.

(a) *Requirements for underserved communities.* An Enterprise shall ensure that a plan relies on adequate information in identifying the underserved community or communities addressed by that plan and shall document that information as part of the plan. In selecting one or more underserved communities to be the focus of a plan, an Enterprise shall consider, among other factors:

(1) Input from public engagement;

(2) Whether the underserved community has previously been the focus of a plan;

(3) The extent of the needs identified for the underserved community, including such needs that may remain despite prior efforts under a plan; and

(4) Whether the underserved community is covered by a different initiative or program of the Enterprise.

(b) *Requirements for objectives.* Objectives identified in a plan shall be logically tied to one or more identified barriers and facilitate establishing meaningful actions and measurable goals.

(c) *Requirements for meaningful actions*—(1) *Relation to objectives and goals.* Meaningful actions shall be logically tied to one or more measurable goals and one or more objectives and support sustainable housing opportunities for an identified underserved community.

(2) *Other Enterprise goals and incremental action.* Meaningful actions may also serve other Enterprise objectives and goals; however, a plan shall reflect significant additional action above and beyond actions that are also serving other Enterprise objectives and goals and shall reflect more than *de minimis* action.

(3) *Significant dedication of resources.* Meaningful actions shall reflect a 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.

(4) *Compliance with law.* Actions that are not compliant with the Safety and Soundness Act, the authorizing statutes, or other applicable law do not qualify as meaningful actions.

(5) *Required remedial actions.* Actions that are required to remediate supervisory findings or required as a result of enforcement actions do not qualify as meaningful actions.

(d) *Requirements for measurable goals.* Measurable goals shall be:

(1) Logically tied to one or more meaningful actions identified in a plan;

(2) Specific;

(3) Time-bound;

(4) Focused on outcomes; and

(5) Facilitative of measuring Enterprise progress, comparing Enterprise performance, and ensuring public accountability.

§ 1293.26 Enterprise board equitable housing and mission responsibilities.

An Enterprise's board of directors shall appropriately consider the objectives, actions, and goals of the Enterprise's Equitable Housing Finance Plan, while also appropriately considering its affordable housing goals, Duty to Serve plans and targets, and other mission-related obligations, in the board's oversight of the Enterprise and the Enterprise's business activities.

§ 1293.27 Program evaluation.

FHFA shall publish on its website a narrative assessment evaluating each Enterprise's performance under their respective Equitable Housing Finance Plans by May 15 of each year.

§§ 1293.28–1293.30 [Reserved]

Subpart D—[Reserved]

Subpart E—Data Collection

§ 1293.41 Required Enterprise data collection and reporting.

Each Enterprise shall collect, maintain, and provide to FHFA the following data relating to single-family mortgages:

(a) The language preference of applicants and borrowers; and

(b) Whether applicants and borrowers have completed homeownership education or housing counseling and information about the homeownership education or housing counseling.

■ 2. Effective February 15, 2026, add subpart D to part 1293 to read as follows:

Subpart D—Federal Home Loan Bank Equitable Housing Finance Planning

Sec.

1293.31 General.
1293.32 Equitable housing reports.
1293.33–1293.40 [Reserved]

Subpart D—Federal Home Loan Bank Equitable Housing Finance Planning

§ 1293.31 General.

(a) This subpart sets forth the Federal Home Loan Banks' (Banks) duty to report on actions voluntarily taken to support underserved communities.

(b) If a date provided in this subpart falls on a day that is not a business day, the date required shall be the next business day.

(c) Submission and publication dates provided in this subpart may be changed by the Director, as determined appropriate, by public order for a particular required submission or publication.

(d) Reports under this subpart are reports required under 12 U.S.C. 4514(a) and therefore must include a notice and declaration in compliance with 12 U.S.C. 4514(a)(4).

§ 1293.32 Equitable housing reports.

(a) *General.* Annually, each Bank shall publicly provide information related to actions voluntarily to taken to overcome barriers to sustainable housing opportunities faced by one or more underserved communities for the prior year and such actions currently planned for the coming year or shall provide a notice that it has not taken any voluntary actions and does not currently have any such voluntary meaningful actions planned for the coming year.

(b) *Contents of the report.* The report shall contain, at a minimum, a narrative assessment consisting of:

(1) A review of voluntary actions taken, including, as applicable major successes, key accomplishments, lessons learned, and challenges experienced; and

(2) A description of any future planned voluntary actions.

(c) *Report or notice submission.* Each Bank shall submit its report to FHFA for review on or before February 15 annually or shall submit a notice to FHFA that it has not taken any voluntary actions and does not currently have such voluntary meaningful actions planned for the coming year.

(d) *FHFA review.* FHFA shall review each report and, prior to publication, may:

(1) Require removal of any confidential or proprietary information;

(2) Require removal of any content that is not consistent with this part, the Safety and Soundness Act, the authorizing statutes, or other applicable law; and

(3) Provide any feedback for consideration.

(e) *Report or notice publication.* Each Bank shall publish its report or notice that it has not taken voluntary actions and does not currently have such voluntary actions planned for the future on its website on April 15 annually and maintain it thereafter. Each Bank shall ensure that reports are accessible to persons with disabilities.

(f) *Additional requirements and guidance.* FHFA may require additional information to be included in reports through other FHFA authorities, such as an order under 12 U.S.C. 4514. From time to time, FHFA may issue public guidance on reports.

§§ 1293.33–1293.40 [Reserved]

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2024–09559 Filed 5–15–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. No. FAA–2021–1032; Special Conditions No. 25–854–SC]

Special Conditions: Airbus Model A321neo XLR Airplanes; Flight Envelope Protection, Icing and Non-Icing Conditions; High Incidence Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Model A321neo XLR airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the applicable airworthiness standards for transport category airplanes. This design feature is flight-envelope protections, in icing and non-icing conditions, that use high-incidence protection and an alpha-floor system to automatically advance throttles when the airplane angle of attack reaches a predetermined value. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective June 17, 2024.

FOR FURTHER INFORMATION CONTACT: Troy Brown, Performance and Environment Unit, AIR–621A, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 1801 S Airport Rd., Wichita, KS 67209–2190; telephone and fax 405–666–1050; email *troy.a.brown@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 16, 2019, Airbus applied for an amendment to Type Certificate No. A28NM to include the new Model A321neo XLR airplane. These airplanes are twin-engine, transport-category airplanes with seating for 244 passengers, and a maximum take-off weight of 222,000 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Airbus must show that the Model A321neo XLR airplane meets the applicable provisions of the regulations listed in Type Certificate No. A28NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A321neo XLR airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A321neo XLR airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38, and they become part of the type certification basis under 14 CFR 21.101.

Novel or Unusual Design Feature

The Airbus Model A321neo XLR airplane will incorporate the following novel or unusual design feature:

Flight-envelope protections, in icing and non-icing conditions, that use high-incidence protection and an alpha-floor function to automatically advance throttles when the airplane angle of attack (AoA) reaches a predetermined value.

Discussion

The current airworthiness standards do not contain adequate safety standards for the high-incidence protection system and the alpha-floor system for the Airbus Model A321neo XLR series airplanes. This is because the FAA's current standards were designed for more traditional electronic flight control systems (EFCS), which involve less advanced envelope protections, such as stick shakers and pushers. These special conditions address the more advanced flight envelope protections, including icing and non-icing conditions, that are part of the EFCS design of the A321neo XLR airplane.

The high-incidence protection system prevents the airplane from stalling and, therefore, the stall warning system is not needed during normal flight conditions. However, during failure conditions which are not shown to be extremely improbable, the requirements of §§ 25.203 and 25.207 apply, although slightly modified by these conditions. If there are failures not shown to be extremely improbable, the flight characteristics at the angle-of-attack for C_{LMAX} must be suitable in the traditional sense, and stall warning must be provided in a conventional manner. These special conditions address the need for modification during icing conditions and non-icing conditions.

The alpha-floor function automatically advances the throttles on the operating engines under flight circumstances of low speed if the airplane reaches a predetermined high AoA. This function is intended to provide increased climb capability.

These special conditions address this novel or unusual design feature on the Airbus Model A321neo XLR and contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued Notice of Special Conditions No. 25–23–03–SC for the Airbus Model A321neo XLR airplane. They were published in the **Federal Register** on November 3, 2023 (88 FR 75513). The FAA received comments from Airbus Commercial Aircraft