

September 26, 2025

Federal Housing Finance Agency
Office of Affordable Housing and Community Investment
400 Seventh Street SW
Washington, DC 20219

Transmitted via regulations.gov

RE: Notice of proposed rulemaking; Repeal of 12 CFR part 1293. RIN: 2590-AB53

To Whom it May Concern:

The NAACP Legal Defense and Education Fund, Inc. (“LDF”) submits this comment to request the Federal Housing Finance Agency (FHFA) to withdraw its proposed rule eliminating the Fair Lending, Fair Housing, and Equitable Housing Finance Plans regulation. FHFA’s 2024 Fair Lending Rule calls for the Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, to identify and address barriers to sustainable housing opportunities for underserved communities. The regulations require, among other things, the GSEs to adopt measurable goals for financing housing in underserved communities. Despite FHFA’s assumptions, the 2024 Fair Lending Rule does not mandate discriminatory or illegal preferences but aims to uplift underserved communities of all backgrounds through lawful means. Moreover, the regulations are not burdensome on the GSEs and offer a real way to increase housing opportunities for underserved communities, including Black communities and other communities of color and low-income communities. LDF urges FHFA to withdraw its proposed rule eliminating the 2024 Fair Lending Rule.

Founded in 1940 by Thurgood Marshall, LDF is the premier racial justice law organization. LDF was launched at a time when America’s aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality. For 85 years, LDF has relied on the U.S. Constitution and federal and state civil rights laws to pursue equality and justice for Black people and other people of color. LDF’s mission has always been transformative: to achieve racial justice, equality, and an inclusive society. Since its inception, LDF has worked to increase fair housing opportunities for Black communities. Some of LDF’s early victories in the Supreme Court were won through *Shelley v. Kramer*, 334 U.S. 1 (1948), and *McGhee v. Sipes*, 334 U.S. 1 (1948), which held that the state enforcement of racially-restrictive covenants violated the Equal Protection Clause. In the decades since those victories, LDF has continued to challenge public and private policies and practices that deny Black people safe, quality housing that is free from discrimination.

I. The 2024 Fair Lending Rule is a Lawful Tool Designed to Increase Housing Opportunities in Underserved Communities, including Black Communities and Low-Income Communities.

The 2024 Fair Lending Rule requires GSE's to develop and maintain Equitable Housing Finance Plans that address underserved communities. The regulations require the GSEs to develop, execute, and report on a plan every three years that identifies barriers to sustainable housing opportunities faced by one or more underserved communities. The GSEs have to set goals and objectives with respect to the identified barriers, and take meaningful actions to support the accomplishment of the goals and objectives. The regulations do not mandate the GSEs take any specific action, or institute programs that make decisions based on race. The only mandate is for the actions to be meaningful. Moreover, because the regulations also require compliance with fair housing and fair lending laws, they explicitly forbid unlawful programs.

Each Enterprise is required to submit its plan or annual update and FHFA must review the submitted plan or update for any content inconsistent with the Safety and Soundness Act, the authorizing statute, or other applicable law including the Fair Housing Act and the Equal Opportunity and Credit Act (ECOA). The annual report should include a summary of outcomes for the year (including outcomes for any activity, homeownership programs, or products performed under the Plan) by race, ethnicity, and underserved community group, and an assessment of the Enterprise's underwriting outcomes and improvements. These key metrics will help the GSEs with understanding which programs are helping to increase housing opportunities in underserved communities. Furthermore, the actions can be directed toward any underserved group, including groups defined by economic disadvantages or other characteristics. The 2024 Fair Lending Rule in no way mandates race-based decisions.

These regulations are lawful tools to increase housing opportunities in underserved communities. The Rule defines underserved community as a group of people with shared characteristics or an area that is subject to current discrimination or has been subjected to past discrimination that has or has had continuing adverse effects on the group or area's participation in the housing market. This can include self-employed individuals, individuals with limited mainstream credit and banking history, and communities which have historically received a lower share of the benefits of GSE programs and activities. In the proposed rule to eliminate the Equitable Plan regulations, FHFA stated the regulations may not align with the administration goals of "terminating discriminatory and illegal preferences, programs, and activities, and combating illegal private-sector diversity, equity, and inclusion preferences, policies, programs, and activities." While it is critically important to note that diversity, equity, and inclusion policies are still lawful by private entities, however, FHFA fails to provide a reasoned explanation for why the Equitable Plan regulations are unlawful.

The regulations do not require GSEs to give preferential treatment to any particular group in deciding who will get access to homeownership. The Equitable Plan regulations provide substantial flexibility to the GSEs about which underserved communities to focus on and how best to address the barriers they face. It does not require unlawful race-based decisions or to

address barriers based on race. For example, Fannie Mae’s Equitable Housing Plan for 2025-2027 found barriers for underserved communities to be 1. Burdensome up-front housing costs 2. Lack of financial resilience 3. Limited credit history and 4. Lack of property resilience.¹ The GSE took action to address those barriers by creating programs that provide liquidity for mortgages with down payment assistance.² Fannie Mae also launched a Title Acceptance pilot with the purpose of reducing closing costs for borrowers by waiving the requirement for lender title insurance on certain refinance transactions that represent lower risk of title issues. They estimated that the Title Acceptance pilot can reduce borrower cost of lender title insurance by \$500 to \$1,500 per loan.³

The Supreme Court has repeatedly held that public and private entities can seek to advance equal opportunity—including racial equity—by using race-neutral means. In *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 220 (2023) (*SFFA*) majority did not disturb, and Justice Kavanaugh reaffirmed in his concurrence, both the government and federally-funded entities can achieve equitable goals through such race-neutral means.⁴ Justice Thomas similarly stated in his concurrence that race-neutral means, like the 2024 Fair Lending Rule, can be used to achieve the benefits of racial diversity.⁵ Similarly, in *Ricci v. DeStefano*, 557 U.S. 557 (2009), the Supreme Court said it did not question “an employer’s affirmative efforts to ensure that all groups have a fair opportunity to apply for promotions and to participate in the process by which promotions will be made.”⁶ Additionally, in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project*, 576 U.S. 519 (2015), the Supreme Court stated there is a distinction between governmental actions that include individual racial classifications and measures that address racial isolation in a general way.⁷ The Court affirmed that the Constitution and the Fair Housing Act leave authorities free to pursue the latter.⁸

II. The 2024 Fair Lending Rule is Critical to Addressing the Lack of Homeownership Opportunity to Black Communities.

The current racial homeownership gap is a result of historical policies like redlining and other discriminatory loan practices, which systematically disadvantaged Black Americans and prevented them from building wealth through homeownership. Underserved communities, including Black communities, continue to have decreased opportunity to achieve homeownership. Since 2001, the Black homeownership rate has seen the most dramatic drop of

¹ Fannie Mae, *Fannie Mae: Equitable Housing Plan 2025-2027*, (2024), <https://business.cch.com/BFLD/Fannie-Mae-2025-2027-EHFP-11252024.pdf>

² *Id.*

³ *Id.*

⁴ *SFFA*, 600 U.S. at 317 (Kavanaugh, concurring) (explaining “governments and universities still can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race” (citing *Croson*) (internal quotations omitted).

⁵ *SFFA*, 600 U.S. at 265 (Thomas, concurring) (explaining that “universities prohibited from engaging in racial discrimination by state law continue to enroll racially diverse classes by race-neutral means”)

⁶ 557 U.S. 557.

⁷ 576 U.S. 519.

⁸ *Id.*

any racial or ethnic group, declining five percent, compared with a one percent decline for white families and increases for Latino and Asian American families.⁹ The racial homeownership gap is as wide today as it was in the late 1960s. Only 43 percent of Black households live in a home they own compared to 74% of white households.¹⁰ Researchers from the Federal Reserve Bank of Minneapolis found Black and Latino applicants remain significantly more likely to be denied than white applicants when controlling for credit score and Black applicants were between 1.8 and 2.5 times as likely to be denied as white applicants with similar observable borrower characteristics in all neighborhood types.¹¹ Furthermore, at least 10% of homes are at risk of under-appraisal in majority-Black neighborhoods, which limits wealth accumulation for homeowners in majority-Black neighborhoods.¹² Not only do Black communities struggle to achieve homeownership, low-income families across the country continue to face barriers to buying homes, primarily because of a lack of income and net worth.¹³ Rescinding the 2024 Fair Lending Rule will allow these issues to continue and could further limit homeownership opportunities for underserved communities.

III. GSEs Have a Legal Obligation to Ensure They Serve the Whole of the Housing Market, Including Underserved People and Communities.

The 2024 Fair Lending Rule helps ensure the GSEs fulfill their existing legal obligations of serving all communities, including underserved communities. In the proposed rule that seeks to repeal the 2024 Fair Lending Rule, FHFA stated that the 2024 Fair Lending Rule may run afoul of two recent executive orders: Executive Order 14173 (Ending Illegal Discrimination and Restoring Merit-Based Opportunity) and Executive Order 14151 (Ending Radical and Wasteful Government DEI Programs and Preferencing). While the legality of these executive orders continues to be litigated in the courts, the 2024 Fair Lending Rule is a lawful policy designed to increase housing opportunities and does not give any discriminatory or illegal preferences to any particular group. To suggest otherwise is misleading. Moreover, executive orders do not override the mandates in the Fair Housing Act and the Equal Credit Opportunity Act, which compel federal agencies to dismantle existing patterns of residential segregation, create communities where everyone has equal access to housing opportunities, and combat segregation by

⁹ Urban Institute, *Reducing the Racial Homeownership Gap: The Data on Black Homeownership*, (2017), <https://www.urban.org/policy-centers/housing-finance-policy-center/projects/reducing-racial-homeownership-gap/data-black-homeownership#:~:text=No%20better%20today%20than%20in,%2C%20Georgia%2C%20the%20gap%20persists.https://democracyjournal.org/magazine/65/the-wealth-gap-equal-returns-on-home-ownership/>

¹⁰ Dorothy Brown, *The Wealth Gap: Equal Returns on Home Ownership*, Democracy: A Journal of Ideas, (2022), <https://democracyjournal.org/magazine/65/the-wealth-gap-equal-returns-on-home-ownership/>

¹¹ Amalie Zinn & Liam Reynolds, *How Local Differences in Race and Place Affect Mortgage Lending*, The Urban Institute, (November 15, 2022), <https://www.urban.org/urban-wire/how-local-differences-race-and-place-affect-mortgage-lending#:~:text=Lenders%20cannot%20deny%20applicants%20because,residents%20in%20a%20census%20tract.https://www.brookings.edu/articles/how-racial-bias-in-appraisals-affects-the-devaluation-of-homes-in-majority-black-neighborhoods/>

¹² Jonathan Rothwell & Andre Perry, *How Racial Bias in Appraisals Affects the Devaluation of Homes in Majority-Black neighborhoods*, The Brookings Institute, (December 5, 2022), <https://www.brookings.edu/articles/how-racial-bias-in-appraisals-affects-the-devaluation-of-homes-in-majority-black-neighborhoods/>

¹³ J. Michael Collins, *Developing Effective Subsidy Mechanisms for Low-Income Homeownership*, Harvard University: Joint Center for Housing Studies, (October 2013), <https://www.jchs.harvard.edu/sites/default/files/hbtl-08.pdf>

prohibiting discriminatory lending practices. The 2024 Fair Lending Rule helps the GSEs with their obligation under the Fair Housing Act and the Equal Credit Opportunity Act by directing the GSEs to identify barriers to sustainable housing opportunities and ensuring all communities have equal access to homeownership. Repealing these regulations will make it harder for the GSEs to meet this obligation.

A. The 2024 Fair Lending Rule Is an Important Tool That Can Help GSEs to Comply With the Fair Housing Act

The Fair Housing Act requires that no person shall be subjected to discrimination because of their protected class (i.e. race, sex, or disability) in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.¹⁴ Congress intended the Fair Housing Act to dismantle existing patterns of residential segregation and create communities where everyone has equal access to housing opportunities. This obligation means, in addition to combatting discrimination, HUD must proactively take measures to foster inclusive communities, help remedy years of segregation and its consequences, and eliminate barriers to housing choice. FHFA is bound by these requirements and GSEs have to comply with these requirements as well. The 2024 Fair Lending Rule aims to help GSEs affirmatively further fair housing and combat segregation by requiring GSEs take meaningful actions to understand the issues related to underserved communities lack of access to homeownership and to affordable rental housing and requires them to take steps to remedy these issues and increase opportunity in those communities.

The 2024 Fair Lending Rule is a lawful policy which requires GSEs to take meaningful actions and put forth a plan the GSEs intend to undertake to further identify objectives to increase homeownership in underserved communities. The Rule helps GSEs with their obligation under the Fair Housing Act, which remains law, to both avoid housing discrimination and affirmatively further fair housing. The 2024 Rule helps prevent housing discrimination by ensuring the GSEs are actively collecting data and working to understand the barriers that exist for certain underserved communities and then requiring a plan to address those barriers, which can prevent discrimination based on certain protected characteristics. Moreover, the Fair Housing Act requires proactive, inclusive programs which dismantle racial segregation.¹⁵ In order to reverse racial housing segregation, GSEs must ensure all communities have access to housing opportunities. To do this, GSEs must increase housing opportunities to underserved communities, which is the purpose of 2024 Lending Rule.

Furthermore, Courts have also affirmed the use of collecting data similar to the data laid out in the 2024 Fair Lending Rule. Courts have held that the Fair Housing Act requires “the consideration of data such as the racial demographics of neighborhoods, other geographic areas, and housing developments, as a necessary precursor to taking meaningful action to promote integration, decrease segregation, undo racially or ethnically concentrated areas of poverty, and

¹⁴ 54 FR 3283 § 100.5

¹⁵ Sandra Park, Why Fair Housing is Key to Systemic Equality, ACLU, (May 5, 2023), <https://www.aclu.org/news/racial-justice/why-fair-housing-is-key-to-systemic-equality>.

overcome significant disparities in access to opportunity.”¹⁶ The U.S. Court of Appeals for the Third Circuit has thus emphasized the importance of racial and socioeconomic data to ensure that “the agency’s judgment was an informed one” based on an institutionalized method to assess site selection and related issues.¹⁷

B. The 2024 Fair Lending Rule Is an Important Tool That Can help GSEs Comply with Their Requirement Under the Equal Credit Opportunity Act and Other Statutory Obligations.

The Equal Credit Opportunity Act prohibits discrimination in credit access to all creditworthy applicants based on race, color, religion, national origin, sex, marital status, or age. The Act prohibits both intentional discrimination but also unjustified facially neutral policies or practices that have an adverse effect or impact on a member of a protected class unless it meets a legitimate business need that cannot reasonably be achieved by less discriminatory means¹⁸. The 2024 Fair lending Rule helps GSEs ensure they are treating all customers fairly by identifying barriers to housing opportunities faced by underserved communities and taking actions to increase homeownership opportunities in those areas. Because the Equal Credit and Opportunity Act states GSEs cannot have any policies that discriminate, it is critical for the GSEs to understand what policies may be barriers to increased housing opportunities for underserved communities and start to take actions to remove those policies. The 2024 Fair Lending Rule helps facilitate this process by requiring GSE’s to specifically identify barriers to sustainable housing opportunities faced by one or more underserved communities; create objectives that are logically tied to one or more identified barriers; and then document specific, measurable, and time-bound goals (goals) for each action tied to increasing housing opportunities for underserved communities. This process helps GSEs with their obligation under the Equal Credit Opportunity Act, by ensuring the GSE’s are actively monitoring and taking action on any policy, intentional or otherwise, which could discriminate in credit access to creditworthy applicants based on race, color, religion, national origin, sex, marital status, or age.

Additionally, under the Safety and Soundness Act, the GSEs have a duty to serve underserved markets. The GSEs are required to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets.¹⁹ The Act further calls for each GSE to provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages for very low-, low-, and moderate income families with respect to the following underserved markets: manufactured housing, affordable housing preservation, and rural Markets.²⁰ The safety and soundness of the future mortgage market depends on there being

¹⁶ 157-638 *HUD Releases Interim Final Rule Restoring Affirmatively Furthering Fair Housing Definitions and Certifications*, FED. BANK. L. REP., 157-638, 2021 WL 9352027, (Jun. 10, 2021); *Blackshear Res. Org. v. Housing Auth. of City of Austin*, 347 F. Supp. 1138, 1148 (W.D. Tex. 1971)

¹⁷ *Shannon v. HUD*, 436 F.2d 809, 821-22 (3d Cir. 1970).

¹⁸ 2

12 CFR § 1002 Supp. I Sec. 1002.4(a)-1

¹⁹ 12 U.S.C. 4565

²⁰ *Id.*

consumers who can fairly access safe and responsible mortgage loans, which means increasing housing opportunities in all markets, including underserved communities. The 2024 Lending Rule supports the safety and soundness in the future mortgage market by helping GSEs increase housing opportunities to underserved communities, thus increasing the number of future customers who can access safe and responsible mortgage loans. While FHFA asserts the 2024 Fair Lending Rule “is unnecessary and may divert Enterprise and Agency resources from approaches that are aligned with FHFA's statutory mandates,” the 2024 Fair Lending Rule will actually help the GSEs with compliance by ensuring the GSEs are taking meaningful actions to increase sustainable housing opportunities for these underserved markets. The 2024 Fair Lending Rule helps, rather than hinders, the GSEs statutory obligations to increase opportunities for underserved markets and communities.

IV. The 2024 Fair Lending Rule is not Burdensome on GSEs.

A. The 2024 Fair Lending Rule Does Not Increase the GSEs Regulatory Burden Because It Helps the GSE's Comply with Existing Statutory Obligations

In the proposed rule eliminating the 2024 Fair Lending Rule FHFA stated the 2024 Lending Rule “imposed unnecessary regulatory burdens,” to the GSEs. This is false and extremely misleading. The 2024 Lending Rule aids GSEs in their statutory obligations and does not create a burden for them. As previously stated, the GSEs have statutory obligations under the Fair Housing Act, Equal Credit Opportunity Act, and the Safety and Soundness Act that requires GSEs to take steps to increase opportunities in underserved markets and communities. The 2024 Fair Lending Rule requires the GSEs to set goals and objectives with respect to the identified barriers experienced by underserved communities and forces them to take meaningful actions to support the accomplishment of the goals and objectives. This process will help GSEs in their statutory obligations because this process requires GSEs to research and take action on issues involving lack of access to homeownership in underserved communities, which directly relates to their statutory duty. Furthermore, the 2024 Fair Lending Rule addresses issues related to regulatory burden. In the 2024 rule FHFA stated, “FHFA does not intend to create liability with this certification, but instead to incentivize consideration of fair lending compliance throughout decision-making processes.”

B. The 2024 Fair Lending Rule Increases Access to Housing.

To say the process laid out in the 2024 Fair Lending Rule is burdensome does not take into account how this process can aid more low-income and underserved communities having access to homeownership, which is foundational to building lasting wealth in America.²¹ In the 2024 Fair Lending Rule FHFA created protocols that would reduce burdens on GSE's. This includes deciding not to develop separate public evaluation metrics, which FHFA said would “create

²¹ U.S. Department of Housing and Urban Development (HUD), *Wealth Accumulation and Homeownership: Evidence for Low-Income Households*, (December 2004), <https://www.huduser.gov/publications/pdf/wealthaccumulationandhomeownership.pdf>

implementation challenges” for the GSE’s.²² The 2024 Fair Lending Rule was not established to create burdens on GSE’s but, instead, to increase access to housing for underserved communities.

America is in the middle of a housing crisis. Tens of millions of households spend more than 30% of their income on housing²³ and the largest recorded number of Americans are experience homelessness.²⁴ Safe and affordable housing is becoming more and more out of reach for millions of Americans across incomes.²⁵ Black people, other people of color, and particularly women of color are more likely to be affected by housing affordability issues,²⁶ with discrimination potentially barring them from housing even if they can afford it.²⁷ While it may seem burdensome to some, the 2024 Lending Rule has already helped GSEs identify and increase homeownership to people who without that opportunity, would not be able to achieve their goal of homeownership. In 2024, the GSEs supported the financing of over 781,000 home purchase loans to first-time homebuyers, including about 390,000 home purchase loans to low-income borrowers (earning at or below 80 percent of area median income)²⁸. Of these borrowers, nearly 88,000 were very low-income (earning at or below 50 percent of the area median income).²⁹ Now is not the time to stop this progress, but to continue to increase homeownership opportunities to all communities.

V. Conclusion

FHFA 2024 Fair Lending Rule helps to ensure underserved communities have increased housing opportunity while also helping the GSEs with their statutory obligation to affirmatively further fair housing. If the 2024 Fair Lending Rule is eliminated, this action would decrease housing opportunities for low-income and underserved communities while also undermining the safety and soundness of the housing finance system. We urge the FHFA to withdraw its proposed

²² FHFA, *Fair Lending, Fair Housing, and Equitable Housing Finance Plans*, 12 CFR § 1293, (May 16, 2024), <https://www.federalregister.gov/documents/2024/05/16/2024-09559/fair-lending-fair-housing-and-equitable-housing-finance-plans#:~:text=I.,Introduction,education%2C%20and%20housing%20counseling%20information>.

²³ Brian Callaci and Sandeep Vaheesan, *The Market Alone Can’t Fix the U.S. Housing Crisis*, Harvard Business Journal, (September 12, 2024), <https://hbr.org/2024/09/the-market-alone-cant-fix-the-u-s-housing-crisis>

²⁴ Samantha Batko and Kathryn Reynolds, *Homelessness Is Solvable, But Only with Sufficient Investment in Housing*, Urban Institute, (December 15, 2023), <https://www.urban.org/projects/road-map-address-americas-housing-crisis>

²⁵ Id.

²⁶ U.S. Department of Treasury, *Racial Differences in Economic Security: Housing*, (November 4, 2022), <https://home.treasury.gov/news/featured-stories/racial-differences-in-economic-security-housing>; Talia Grossman, Sarah Hassmer, and Sarah Javaid, *The Continuing Need for Gender, Racial, and Disability Justice in the Rental System*, National Women’s Law Center, (January 2024), <https://nwlc.org/resource/the-continuing-need-for-gender-racial-and-disability-justice-in-the-rental-system/>

²⁷ Jamie Langowski, et al, *Qualified Renters Need Not Apply: Race and Housing Voucher Discrimination in the Metropolitan Boston Rental Housing Market*, Georgetown Journal on Poverty Law and Policy, Volume XXVIII, Number 1, (November 2020), <https://www.law.georgetown.edu/poverty-journal/wp-content/uploads/sites/25/2021/02/FINAL-Qualified-Renters-12.15-1.pdf>

²⁸ See Enterprise 2024 Annual Housing Activity Reports & Annual Mortgage Reports, available at <https://www.fanniemae.com/about-us/corporate-governance/ahar-and-amr> and <https://www.freddiemac.com/about/business/affordable-housing>.

²⁹ Id.

rule and continues to allow the GSEs to adopt measurable goals for financing housing in underserved communities.

Thank you for the opportunity to give a comment. If you have any questions, please contact David Wheaton³⁰, Assistant Policy Counsel, at dwheaton@naacpldf.org or Amalea Smirniotopoulos, Senior Policy Counsel & Co-Manager for the Equal Protection Initiative, at asmirniotopoulos@naacpldf.org.

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