Comments on FHFA's Proposed Repeal of 12 CFR Part 1293

Docket No. (RIN) 2590-AB53

Redundancy Versus FHFA's Statutory Authority

FHFA's assertion that Part 1293 simply echoes fair-lending requirements enforced by HUD, CFPB, and FTC overlooks the distinct authority Congress conferred on this Agency. Under the Safety and Soundness Act, FHFA alone can fold fair-lending performance into capital, liquidity, and management ratings—enforcement levers that other regulators lack. In my opinion, repealing Part 1293 without acknowledging this unique mandate could exceed FHFA's statutory bounds and could undermine the legal foundation for tying supervisory ratings directly to fair-lending outcomes.

Corporate Governance and Director Oversight

12 CFR 1293.11(c) explicitly required each board of directors to place fair-lending risk on the same agenda level as capital, liquidity, and operational risks. This clear mandate ensured that fair-lending remained a standing boardroom priority rather than one compliance item among many. By contrast, the broad fiduciary standard in 12 CFR 1239.4(b)(4) simply calls for a general compliance program and offers no guarantee that fair-lending will receive dedicated board attention. Removing the explicit oversight requirement could weaken the direct link between Congress's public-purpose directive and the GSEs' governance structure. Without a rule that mandates board engagement on fair-lending, FHFA could potentially fall short of its statutory charge to enforce "appropriate risk management" for these critical concerns.

Statutory Reporting and Certification Requirements

Although 12 U.S.C. 4514 empowers FHFA to demand reports, the statute does not specify their timing, format, or content. Section 1293.12 filled that gap with clear annual deadlines, uniform data specifications, and a director-certification process—elements essential for legal certainty and meaningful review. Striking these provisions without replacing them with binding guidance could result in confusion in examinations.

Misapplication of Executive Orders

The notice leans heavily on Executive Orders 14173 and 14151 to justify scrapping Equitable Housing Finance Plans, yet those directives target internal federal-agency DEI programs and private procurement preferences—not the GSEs' Congressionally mandated mission to address credit access disparities. Stretching their text to override a statutory equity mandate may raise questions about the legal basis for this repeal and risks conflict with the GSEs' foundational legislation.

Data Standards

Voluntary MISMO schemas and sampled NSMO surveys cannot replace the comprehensive loan-level reporting Part 1293 required. Uneven MISMO adoption and NSMO's sampling design fail to deliver the consistent, detailed borrower information FHFA needs to monitor and correct discriminatory practices. Dispensing with mandatory fields undermines the Agency's ability to build a legally sufficient record for future supervisory or enforcement actions.

Reliance Interests and Implementation Costs

Part 1293 spurred Enterprises, FHLBanks, and community partners to invest millions of dollars in IT upgrades, staff training, and outreach strategies. Abruptly undoing these obligations mid-cycle overlooks the reliance interests that the APA requires the Agency to consider. A robust analysis of stakeholder investments and expectations is crucial to support any lawful repeal.

Cost Analysis: Historical Baseline Versus Forward-Looking Assessment

FHFA's choice to treat 2022–2024 equitable activity as sunk costs departs from OMB Circular A-4's mandate to compare regulatory changes against a forward-looking "no-action" baseline. Without projected costs and benefits for 2025–2027 under both compliance and repeal scenarios, the economic justification for rescission may remain legally incomplete and may not meet APA standards for reasoned decision-making.

Process Concerns: Compressed Timeline and Insufficient Record

Proposing repeal barely a year after Part 1293's implementation and with minimal stakeholder outreach suggests a haste that undercuts procedural requirements under the APA. A rule of this magnitude demands a comprehensive record—grounded in

data, legal analysis, and public input—to withstand judicial review and honor FHFA's supervisory responsibilities.

FHFA ought to pause this expedited repeal and develop a fully documented, statutorily grounded rulemaking record. Any amendment to Part 1293 should seek to respect the Agency's unique authority, adhere to APA and OMB Circular A-4 guidelines, and preserve the fair-lending and equity safeguards Congress intended.

Thank you for considering my comments.

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