



## **FEDERAL HOUSING FINANCE AGENCY**

### **12 CFR Part 1228**

#### **RIN 2590-AB30**

### **Exception to Restrictions on Private Transfer Fee Covenants for Loans Meeting Certain Duty to Serve Shared Equity Loan Program Requirements**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is adopting as final, without substantive change, a proposed rule amending its regulation that restricts its regulated entities—the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), and the Federal Home Loan Banks (Banks)—from purchasing, investing in, accepting as collateral, or otherwise dealing in mortgages on properties encumbered by certain types of private transfer fee covenants (PTFCs), or related securities, subject to certain exceptions (PTFC Regulation). As proposed, the final rule establishes an additional exception that authorizes the Enterprises and Banks to engage in such transactions if the loans meet the shared equity loan program requirements for Resale Restriction Programs in FHFA’s Duty to Serve Underserved Markets Regulation (Duty to Serve Regulation), without regard to any household income limit.

**DATES:** The final rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

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400 Seventh Street, SW, Washington, DC 20219. These are not toll-free numbers. The mailing address for each contact is: Federal Housing Finance Agency, Fourth Floor, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### *A. Proposed PTFC Rule*

On September 26, 2023, FHFA published a Notice of Proposed Rulemaking (proposed PTFC rule) in the *Federal Register* to amend FHFA's PTFC Regulation.<sup>1</sup> The proposed PTFC rule proposed adding an exception to the PTFC Regulation's restrictions for loans on properties with PTFCs, and related securities, if the loans meet the shared equity loan program requirements for Resale Restriction Programs, other than the 100 percent of area median income (AMI) limit, in § 1228.34(d)(4)(i)(A) and (d)(4)(ii) of FHFA's Duty to Serve Regulation.<sup>2</sup> Thus, the Enterprises and Banks would be authorized to purchase, invest in, accept as collateral, or otherwise deal in loans on properties with PTFCs, or related securities, if the loans met the requirements for Duty to Serve Resale Restriction Programs, without regard to any household income limit. Relevant discussion from the proposed PTFC rule's preamble is included below.

FHFA received comments on the proposed PTFC rule from Fannie Mae, Freddie Mac, three nonprofit organizations, one trade association, and one individual. The Banks did not submit any comments. The comments are further discussed in Section VI. below.

#### *B. Statutory and Regulatory Background: Enterprises*

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (Safety and Soundness Act), provides that the Director of FHFA has a duty to

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<sup>1</sup> 88 FR 65827 (Sept. 26, 2023).

<sup>2</sup> 12 CFR 1282.34(d)(4)(i)(A), (d)(4)(ii).

ensure that the operations and activities of the Enterprises foster liquid, efficient, competitive, and resilient national housing finance markets.<sup>3</sup> To achieve these goals, the Enterprises purchase residential mortgages that fall within the conforming loan limits established pursuant to 12 U.S.C. 1717 and 12 U.S.C. 1454, and issue guaranteed mortgage-backed securities backed by those loans.

In addition, the Safety and Soundness Act provides generally that the Enterprises “have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families.”<sup>4</sup> Section 1129 of the Housing and Economic Recovery Act of 2008 (HERA) amended section 1335 of the Safety and Soundness Act to establish a duty for the Enterprises to serve three specified underserved markets (Duty to Serve) in order to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for certain categories of borrowers in those markets.<sup>5</sup> Specifically, the Enterprises are required to provide leadership in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families for the manufactured housing, affordable housing preservation, and rural housing markets.<sup>6</sup> FHFA’s Duty to Serve Regulation,<sup>7</sup> which implements these Duty to Serve statutory requirements, is discussed further below.

### *C. Statutory and Regulatory Background: Federal Home Loan Banks*

The eleven Banks are wholesale financial institutions organized under the Federal Home Loan Bank Act to support housing finance and further affordable housing and community development.<sup>8</sup> The Banks are cooperatives and carry out their mission

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<sup>3</sup> 12 U.S.C. 4513(a)(1)(B)(ii).

<sup>4</sup> 12 U.S.C. 4501(7).

<sup>5</sup> 12 U.S.C. 4565.

<sup>6</sup> 12 U.S.C. 4565(a). The terms “very low-income,” “low-income,” and “moderate-income” are defined in 12 U.S.C. 4502.

<sup>7</sup> 12 CFR part 1282, subpart C.

<sup>8</sup> See 12 U.S.C. 1421 *et seq.*

primarily by providing products and services to their member institutions. Bank members and eligible housing associates (nonmember mortgagee borrowers such as state housing finance agencies) may obtain access to secured loans, known as advances.<sup>9</sup> These must be fully secured by eligible collateral at the time of issuance or renewal, which may include, among other forms of collateral, residential mortgages and mortgage-backed securities.<sup>10</sup> In addition, the Banks issue standby letters of credit on behalf of members and housing associates, which may be secured by residential mortgages and mortgage-backed securities.

Most Banks also offer Acquired Member Assets (AMA) programs, under which they acquire eligible mortgages from participating members and housing associates, subject to parameters set forth in FHFA's AMA regulation.<sup>11</sup> The Banks are also authorized to invest in mortgage-backed securities and other mortgage-related investments meeting applicable requirements.<sup>12</sup> Finally, the Banks may serve as pass-through entities for mortgage loans acquired by another purchaser.

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<sup>9</sup> See 12 U.S.C. 1426(a)(4), 1430(a), 1430b.

<sup>10</sup> See 12 U.S.C. 1430(a)(3), 1430(b); 12 CFR 1266.7, 1266.17, part 1269.

<sup>11</sup> See 12 CFR part 1268.

<sup>12</sup> See 12 CFR 1267.3(a)(4)(iv), (v).

## II. PTFC Regulation

FHFA's PTFC Regulation, which was adopted in 2012, prohibits the Enterprises and Banks from purchasing, investing in, or otherwise dealing in any mortgages encumbered by PTFCs, or related securities, and prohibits the Banks from accepting such mortgages or securities as collateral for advances, unless such PTFCs are "excepted transfer fee covenants."<sup>13</sup> Under the PTFC Regulation, the term "PTFCs" means obligations that purport to "run with the land" in the records of title to real property or to bind current owners of, and successors in title to, such real property, and that obligate a transferee or transferor to pay a private transfer fee upon transfer of the property.<sup>14</sup> A "private transfer fee" is defined in the PTFC Regulation as "a transfer fee, including a charge or payment, imposed by a covenant, restriction, or other similar document and required to be paid in connection with or as a result of a transfer of title to real estate, and payable on a continuing basis each time a property is transferred (except for transfers specifically excepted) for a period of time or indefinitely."<sup>15</sup>

In adopting the PTFC Regulation, FHFA was concerned that private transfer fees would: (1) be used to fund purely private continuous streams of income for select market participants, either directly or through securitized investment vehicles; (2) not benefit homeowners or the properties involved; and (3) interfere with accurate determination of property values. Therefore, FHFA concluded that mortgages on properties with PTFCs might impair the safety and soundness of the Enterprises and the Banks that purchase, invest in, or otherwise deal in, or in the case of the Banks, that accept as collateral, such mortgages.<sup>16</sup>

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<sup>13</sup> 12 CFR 1228.2.

<sup>14</sup> 12 CFR 1228.1.

<sup>15</sup> 12 CFR 1228.1. The definition excludes fees, charges, payments, or other obligations imposed by or payable to the Federal government or a State or local government, or that defray actual costs of the transfer of the property, including transfer of membership in the relevant covered association. The final rule does not modify this exclusion.

<sup>16</sup> See 77 FR 15566, 15567 (March 16, 2012).

The prohibition in the PTFC Regulation does not apply where the PTFC is an “excepted transfer fee covenant,” which is defined in the regulation as a covenant that requires payment to a “covered association” and that limits the use of such payment to purposes that provide a “direct benefit” to the real property.<sup>17</sup>

### **III. Interaction Between the PTFC Regulation and the Enterprise Duty to Serve Regulation and Activities**

Approximately four years after the adoption of the PTFC Regulation, FHFA adopted the Duty to Serve Regulation, which applies only to the Enterprises.<sup>18</sup> Under the Duty to Serve Regulation, each Enterprise is required to prepare an Underserved Markets Plan (Plan), which is subject to Non-Objection by FHFA, and which describes the specific activities and objectives the Enterprise will undertake over a three-year period to fulfill its Duty to Serve in each underserved market.<sup>19</sup> The regulation identifies specific types of activities that are eligible to receive Duty to Serve credit and that an Enterprise may include in its Plan for each underserved market.<sup>20</sup> An Enterprise may also include additional activities in its Plan, subject to FHFA determination of whether they are eligible to receive Duty to Serve credit.<sup>21</sup>

Under the Duty to Serve Regulation, one of the activities eligible for Duty to Serve credit under the affordable housing preservation market is Enterprise support for shared equity programs for affordable homeownership preservation in the form of resale restriction programs administered by community land trusts, other nonprofit organizations, or state or local governments or instrumentalities (collectively, Resale

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<sup>17</sup> 12 CFR 1228.1.

<sup>18</sup> 12 CFR part 1282, subpart C; 81 FR 96242 (Dec. 29, 2016).

<sup>19</sup> 12 CFR 1282.32(a), (b).

<sup>20</sup> See 12 CFR 1282.33(c) for eligible activities in the manufactured housing market; 12 CFR 1282.34(c), (d) for eligible activities in the affordable housing preservation market; and 12 CFR 1282.35(c) for eligible activities in the rural housing market.

<sup>21</sup> 12 CFR 1282.32(d)(2).

Restriction Programs).<sup>22</sup> The Duty to Serve Regulation further specifies the following criteria for an eligible Resale Restriction Program:

- (a) Provides homeownership opportunities to very low-, low-, or moderate-income households;
- (b) Utilizes a ground lease, deed restriction, subordinate loan, or similar legal mechanism that includes provisions stating that the program will keep the home affordable for subsequent very low-, low-, or moderate-income households, the affordability term is at least 30 years after recordation, a resale formula applies that limits the homeowner's proceeds upon resale, and the program administrator or its assignee has a preemptive option to purchase the homeownership unit from the homeowner at resale; and
- (c) Supports homebuyers and homeowners to promote sustainable homeownership, including reviewing and pre-approving refinances and home equity lines of credit.<sup>23</sup>

The proposed PTFC rule referred to the very low-, low-, and moderate-income household income limits in these Duty to Serve regulatory provisions as the "100 percent of area median income limit," which is the definition of "moderate-income" in the Safety and Soundness Act and the Duty to Serve Regulation. The definitions of "very low-income" (50 percent of AMI) and "low-income" (80 percent of AMI) are subsumed within the definition of "moderate-income."<sup>24</sup>

The preamble to the 2015 proposed Duty to Serve rule noted that many shared equity loan programs allow the program sponsors (also called administrators) to charge modest fees that cover the cost of operating the program.<sup>25</sup> However, the preamble to the

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<sup>22</sup> 12 CFR 1282.34(d)(4)(i)(A).

<sup>23</sup> 12 CFR 1282.34(d)(4)(ii).

<sup>24</sup> 12 CFR 1282.1(b); 12 U.S.C. 4502(14), (16), (24).

<sup>25</sup> 80 FR 79181, 79203 (Dec. 18, 2015).

final Duty to Serve rule did not reiterate this discussion of fees, nor did its regulatory text include a reference to fees.<sup>26</sup> The final Duty to Serve rule also did not refer to or amend the PTFC Regulation to provide an exception to the restriction on PTFCs for loans that meet Resale Restriction Program requirements in the Duty to Serve Regulation.

Prior to FHFA's issuance of the proposed PTFC rule, between 2018 (the first year of Duty to Serve program implementation) and 2022, the Enterprises, collectively, purchased more than 800 shared equity loans that met Duty to Serve criteria. Both Enterprises' 2022-2024 Duty to Serve Plans include plans to purchase shared equity loans under Resale Restriction Programs in each of the Plan years.

During the Enterprises' efforts to implement the shared equity loan objectives in their current Duty to Serve Plans, the Enterprises reviewed model organizational documents that were proposed to be used as templates by Resale Restriction Programs. In preparing to establish approved templates, the Enterprises determined that, while Resale Restriction Programs using the templates would meet the criteria for Resale Restriction Programs in the Duty to Serve Regulation, except for the household income limit, the programs' possible inclusion of PTFC payment requirements could cause any loans issued under the terms of the model organizational documents to be ineligible for purchase by the Enterprises because of the PTFC Regulation's limitations. The Enterprises also realized that loans they purchased previously under many of the Resale Restriction Programs are secured by properties encumbered by PTFCs that fall within the PTFC Regulation's prohibition because they bind current owners and successors to pay a fee to the program administrator (often a community land trust) on a continuing basis

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<sup>26</sup> 81 FR 96294 (Dec. 29, 2016); 12 CFR 1282.34(d)(4).

each time the property is transferred, but those PTFCs do not meet the PTFC

Regulation's definition of an "excepted transfer fee covenant."<sup>27</sup>

#### **IV. Regulatory Waiver of § 1228.2 for the Enterprises—Proposed § 1228.1**

In response to the Enterprises' identification of PTFCs in shared equity loans under Resale Restriction Programs that otherwise would be eligible for purchase and qualify for Duty to Serve credit, FHFA reviewed these types of loans and determined that the private transfer fees in these programs are not the types of fees that prompted the concern underlying the PTFC Regulation. Unlike fees paid to the select market participants that concerned FHFA when the PTFC Regulation was adopted, the fees in Resale Restriction Programs reimburse the program administrators, which are typically community land trusts, nonprofits, or local governments, for their ongoing operating expenses related to the purchase and sale of affordable homes under the program. The fees are not used as a method to provide a continuous income stream to the program administrators with no continuing affordable housing-related services provided. For example, fees in Resale Restriction Programs may be used to pay for: maintaining a list of, and qualifying, prospective program-eligible homebuyers; providing seller representation and outreach to prospective buyers; ensuring that repairs are incorporated into the sale transaction; providing potential homebuyers with homeownership counseling or similar education; exercising the program administrator's option to purchase the home if the homeowner defaults on the first lien or the affordability restriction; enforcing the long-term affordability requirements (such as calculating the maximum resale price according to the resale formula); and executing legal documents with subsequent homebuyers.

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<sup>27</sup> The fees or payments are used by the program administrator to pay for its operating costs, including costs of enforcing the long-term affordability requirements. They are not limited to costs and activities that are specific to the "burdened community" in which the subject property is located, nor are they otherwise required to be used for the purpose of providing a "direct benefit" to the property (as these quoted terms are defined in the PTFC Regulation). *See* 12 CFR 1228.1.

The Enterprises and other practitioners familiar with shared equity programs also provided input that these programs typically set income limits up to 140 percent of AMI, which is above the Duty to Serve household income limit of 100 percent of AMI, especially in communities where housing costs are high relative to incomes. Fannie Mae also noted that limiting eligibility under the PTFC Regulation to loans that meet the Duty to Serve household income limit would require lenders and shared equity program administrators to use a differentiated approach with borrowers above and below the income limit. Further, it would require lenders to review each loan to ensure eligibility for purchase by the Enterprises. FHFA finds these points persuasive, and agrees that the burden and potential deterrent effect of this differentiated approach and additional review would undermine the objective of standardizing the shared equity homeownership market and increasing the number of Enterprise shared equity loan purchases under the Duty to Serve program.

Accordingly, FHFA issued a temporary prospective waiver of the private transfer fee restrictions in § 1228.2 of the PTFC Regulation for Enterprise purchases or securitizations of shared equity loans on properties with PTFCs that meet the shared equity loan program criteria for Resale Restriction Programs, other than the Duty to Serve 100 percent of AMI limit, in 12 CFR 1282.34(d)(4)(i)(A) and (d)(4)(ii) of the Duty to Serve Regulation, through the remaining term of the Enterprises' current 2022-2024 Duty to Serve Plans, *i.e.*, through December 31, 2024.

The waiver also included a retrospective component that waived the restrictions in the PTFC Regulation for shared equity loans on properties with private transfer fees purchased or securitized by the Enterprises with note dates prior to July 1, 2023, regardless of whether the loans met the Duty to Serve shared equity loan program criteria for Resale Restriction Program loans that were in effect when the loans were purchased.

Finally, the waiver provided notice of FHFA’s intention to promptly engage in notice-and-comment rulemaking to propose amending the PTFC Regulation to codify the waiver provisions. To implement that intent, FHFA published the proposed PTFC rule referenced in Section I. above, which proposed to amend the definition of “excepted transfer fee covenant” in § 1228.1 of the PTFC Regulation to add as an exception a PTFC that encumbers a property for which a shared equity loan meets the requirements of a Duty to Serve Resale Restriction Program, other than the 100 percent of AMI limit, in 12 CFR 1282.34(d)(4)(i)(A) and (d)(4)(ii).

**V. Interaction Between the PTFC Regulation and the Banks’ Activities—**

**Proposed § 1228.1**

As noted above, the PTFC Regulation also prohibits the Banks from purchasing, investing in, or otherwise dealing in mortgages on properties encumbered by PTFCs, or related securities, and prohibits the Banks from accepting such mortgages or securities as collateral for advances, subject to the exceptions in the regulation.<sup>28</sup> The Banks have indicated that, to their knowledge, they have not purchased, or accepted as collateral, any shared equity loans. The same considerations discussed above for the Enterprises regarding differences in the uses of fees payable at resale to administrators of Resale Restriction Programs and the fees that FHFA was concerned about when the PTFC Regulation was adopted, also apply to the Banks. However, because the waiver for the Enterprises derived from their activities under the Duty to Serve Regulation (which does not apply to the Banks), the waiver did not address activities of the Banks with respect to shared equity loans. The Banks might decide in the future to purchase, invest in, accept as collateral, or otherwise deal in shared equity loans, or related securities, under Resale Restriction Programs, to facilitate increased liquidity for affordable homeownership.

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<sup>28</sup> 12 CFR 1228.2.

Therefore, FHFA proposed in the proposed PTFC rule that the exception added in § 1228.1 for the Enterprises also apply to the Banks.

## **VI. Public Comments Received on the Proposed PTFC Rule**

FHFA requested feedback on specific questions posed in the proposed PTFC rule's preamble, each of which is discussed below. FHFA received comments on the proposed PTFC rule from Fannie Mae, Freddie Mac, three nonprofit organizations that are active in the shared equity housing industry, a home builders trade association, and an individual. None of the Banks submitted comments. FHFA has reviewed and considered all of the comments, which overwhelmingly supported the proposed PTFC rule.

The individual commenter expressed general disagreement with government regulation of the mortgage market and opposed the proposed PTFC rule on that basis. For the reasons described above, FHFA, as regulator of the Enterprises and the Banks, is proceeding with this rulemaking because FHFA believes the original basis for the PTFC Regulation continues to support the restrictions therein and there is a reasonable basis to adopt the proposed amendments.

The specific questions that FHFA invited commenters to address were as follows:

*1. Should the proposed PTFC rule apply to the Banks in addition to the Enterprises? Do differences between the Banks and the Enterprises warrant additional or other revisions to the proposed PTFC rule as it relates to the Banks?*

The home builders trade association and one nonprofit organization supported applying the provisions in the proposed PTFC rule to the Banks in addition to the Enterprises. These commenters stated that this broad application would remove barriers that might prevent the Banks from expanding their activities to include shared equity homeownership, including investing in shared equity loans or related securities, or accepting these loans as collateral. The other commenters did not address this question.

2. *Should all of the Duty to Serve Resale Restriction Program criteria, including the 100 percent of AMI limit, apply to the determination of whether a mortgage loan that is subject to PTFCs, or a related security, is eligible for purchase, investment, otherwise dealing in, or acceptance as collateral by the Banks and Enterprises? If not, which of those specific criteria should apply?*
3. *Should criteria other than the Duty to Serve Resale Restriction Program criteria (such as an income limit different from 100 percent of AMI), apply to the determination of eligibility?*

Two of the nonprofit organizations and both Enterprises supported the proposed approach—applying the Duty to Serve Resale Restriction Program criteria other than the Duty to Serve household income limit—to the determination of whether a mortgage loan that is subject to PTFCs, or a related security, is eligible for purchase, investment, otherwise dealing in, or acceptance as collateral by the Banks and Enterprises. The third nonprofit organization stated that it did not have an opinion on whether to apply the Duty to Serve household income limit. The home builders trade association generally supported applying the proposed PTFC rule to the Banks, which FHFA construes as support for not applying the Duty to Serve household income limit.

The two nonprofit organizations that supported the proposed approach noted that market conditions are leading many shared equity programs to serve homebuyers with incomes that are higher than the Duty to Serve household income limit. These commenters stated that applying a household income limit would unnecessarily limit flexibility and restrict secondary market access for lenders, shared equity homeownership programs, and homebuyers. One of these nonprofit organizations encouraged FHFA to allow the Enterprises to advance standardization in the shared equity homeownership market, including for shared equity loans to higher-income homebuyers, whose loans would be eligible for purchase or investment by an Enterprise or Bank even though they

are ineligible for Duty to Serve credit.

Fannie Mae commented that the proposed PTFC rule would clarify how the Enterprises can continue to provide liquidity in the shared equity homeownership market, and Freddie Mac commented that the proposed PTFC rule would contribute to its ability to increase access to credit for this underserved market. Fannie Mae suggested that applying a household income limit would require lenders and shared equity programs to use different approaches with borrowers above and below the limit, which could result in additional cost burdens for borrowers below the limit. FHFA finds this an additional persuasive reason to not apply a household income limit.

Fannie Mae suggested a technical edit that it stated would better align the language in § 1228.1 of the proposed PTFC rule with the language in the Duty to Serve Regulation, making it easier for lenders and others in the housing industry to interpret and apply the language. Specifically, Fannie Mae suggested that the proposed PTFC rule's reference to "the Duty to Serve 100 percent of area median income limit" be changed to the Duty to Serve "provisions relating to very low-, low- and moderate-income families and households" (the individual income limit components). FHFA agrees that greater clarity could be provided regarding these references and has adopted a different, more straightforward technical change to the language in the final rule. Specifically, rather than refer to the "100 percent of area median income limit," the final rule states that "no household income limit shall apply." (Because no household income limit will apply, it is unnecessary to add references to the individual income limit components.)

*4. Should criteria in addition to the Duty to Serve Resale Restriction Program criteria apply to the determination of eligibility?*

Fannie Mae and one of the nonprofit organizations opposed applying criteria in addition to the Duty to Serve Resale Restriction Program criteria when determining

eligibility of loans for purchase by the Enterprises, with the nonprofit organization stating that the Duty to Serve criteria have worked well to date. The other commenters did not address this question.

## **VII. Limitation on Applicability— Proposed § 1228.3**

The proposed PTFC rule proposed removing the prospective application and effective date in § 1228.3 of the PTFC Regulation. Section 1228.3 currently includes a “grandfather” provision for mortgages on certain properties encumbered by PTFCs if those PTFCs were created pursuant to an agreement entered into before the July 16, 2012 effective date of the PTFC Regulation. The transitional provision is no longer necessary because the Enterprises and the Banks have been operating under the terms of the PTFC Regulation since July 16, 2012, and the Enterprises subsequently have been operating under the terms of the regulatory waiver since July 1, 2023. The prospective application date (*i.e.*, the effective date) of this final rule is **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. This date precedes December 31, 2024, which is the conclusion of the 2022-2024 Duty to Serve Plan cycle and the date on which the temporary prospective component of the waiver will expire.

The proposed PTFC rule also proposed to revise § 1228.3 to include the retrospective component of the waiver, by allowing the Enterprises to retain in their portfolios shared equity loans on properties with private transfer fees that were purchased or securitized by the Enterprises with note dates prior to the effective date of the waiver (July 1, 2023), regardless of whether the loans met the Duty to Serve shared equity loan program criteria for Resale Restriction Programs in 12 CFR 1282.34(d)(4)(i)(A) and (d)(4)(ii).

No comments were received on the proposed revisions to § 1228.3. The final rule adopts the proposed revisions to § 1228.3 with technical changes to improve clarity regarding the intent of the provisions. Specifically, the final rule adds the word

“promissory” before “note” to clarify that the limitation on applicability applies to promissory notes and not to other types of notes. In addition, the phrase “that were purchased or securitized by the Enterprises” is removed in the final rule to make clear that the sentence applies broadly to all of the activities of both the Enterprises and the Banks encompassed in § 1228.2. In other words, part 1228 is inapplicable not only to purchases and securitizations of shared equity loans, or related securities, with promissory note dates prior to July 1, 2023, but also to investing in, accepting as collateral, or otherwise dealing in such loans or related securities.

### **VIII. Final Rule**

For the reasons discussed above and after considering the comments received on the proposed PTFC rule, which overwhelmingly supported the proposed PTFC rule, FHFA is adopting the proposed PTFC rule as a final rule with the change to the household income limit language in § 1228.1, and the technical changes in § 1228.3, as summarized below.

#### *A. § 1228.1—Definition of “excepted transfer fee covenant.”*

The final rule revises the definition of “excepted transfer fee covenant” in § 1228.1 to add an exception, in new paragraph (2), to the regulation’s restrictions on loans on properties with PTFCs, and related securities, if the PTFC requires payment of a private transfer fee under a program meeting the Duty to Serve shared equity loan program criteria for Resale Restriction Programs in 12 CFR 1282.34(d)(4)(i)(A) and (d)(4)(ii), except that no household income limit shall apply.

#### *B. § 1228.3—Limitation on applicability.*

The final rule revises § 1228.3 by removing the transitional provision with prospective application and effective dates that are long past, and providing instead that this part is not applicable to shared equity loans, or related securities, with promissory note dates prior to July 1, 2023, regardless of whether the loans met the Duty to Serve

shared equity loan program criteria for Resale Restriction Programs in 12 CFR

1282.34(d)(4)(i)(A) and (d)(4)(ii).

#### **IX. Paperwork Reduction Act**

The final rule does not contain any information collection requirement. Thus, it does not require 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.

#### **X. 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, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis 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 and FHFA certifies that the final rule will not have a significant economic impact on a substantial number of small entities because the final rule applies only to Fannie Mae, Freddie Mac, and the Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

#### **XI. 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 OMB.

#### **XII. Consideration of Differences Between the Banks and the Enterprises**

When promulgating regulations relating to the Banks, section 1313(f) of the Safety and Soundness Act requires the Director of FHFA to consider the differences between the Banks and the Enterprises with respect to: the Banks' cooperative

ownership structure; mission of providing liquidity to members and housing associates; affordable housing and community development mission; capital structure; and joint and several liability. In the proposed PTFC rule’s preamble, FHFA requested comments regarding whether differences related to those factors should result in any additional or other revisions to the proposed PTFC rule. No commenter on the proposed PTFC rule supported amending the PTFC Regulation to apply different criteria to the Banks or the Enterprises.

In preparing this final rule, FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors and the lack of comments supporting applying different criteria to the Banks or the Enterprises. FHFA determined that the final rule is appropriate as it would have no impact on four of the five factors and could have a modest, positive impact on the fifth factor — the mission of providing liquidity to Bank members and housing associates.

#### **List of Subjects in 12 CFR Part 1228**

Banks, Banking, Condominiums, Cooperatives, Federal Home Loan Banks, Government-sponsored enterprises, Investments, Loan programs—housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Real property acquisition, Securities.

For the reasons stated in the preamble, and under the authority of 12 U.S.C. 4526, FHFA amends part 1228 of chapter XII of title 12 of the Code of Federal Regulations as follows:

#### **PART 1228--RESTRICTIONS ON THE ACQUISITION OF, OR TAKING SECURITY INTERESTS IN, MORTGAGES ON PROPERTIES ENCUMBERED BY CERTAIN PRIVATE TRANSFER FEE COVENANTS AND RELATED SECURITIES**

1. The authority citation for part 1228 is revised to read as follows:

**Authority:** 12 U.S.C. 4511, 4513, 4526, 4565, 4616, 4617, 4631.

2. Amend § 1228.1 by revising the definition of “Excepted transfer fee covenant”

to read as follows:

**§ 1228.1 Definitions.**

\* \* \* \* \*

*Excepted transfer fee covenant* means a private transfer fee covenant that:

(1) Requires payment of a private transfer fee to a covered association and limits the use of such transfer fees exclusively to purposes which provide a direct benefit to the real property encumbered by the private transfer fee covenants; or

(2) Requires payment of a private transfer fee under a program meeting the Duty to Serve shared equity loan program criteria for resale restriction programs in § 1282.34(d)(4)(i)(A) and (d)(4)(ii) of this chapter, except that no household income limit shall apply.

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3. Revise § 1228.3 to read as follows:

**§ 1228.3 Limitation on applicability.**

This part is not applicable to shared equity loans, or related securities, with promissory note dates prior to July 1, 2023, regardless of whether the loans met the Duty to Serve shared equity loan program criteria for resale restriction programs in § 1282.34(d)(4)(i)(A) and (d)(4)(ii) of this chapter.

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