

September 7, 2021

Clinton Jones
General Counsel
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20219

RE: Policy Statement; Comment Request: (2021-N-7)

Dear Mr. Jones:

On behalf of the 2.2 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the recent Policy Statement on Fair Lending by the Federal Housing Finance Agency (FHFA). HCUA supports the FHFA in a strong, thorough, fair lending examination program of the GSEs and the FHLBanks, but urges the FHFA to consider the downstream effects of its policies and expectations for credit unions which are uniquely structured and may be smaller than other lenders.

Background

As the primary regulator for the GSEs and the Federal Home Loan Banks (FHLBanks), the FHFA has an obligation to supervise these entities' compliance with *The Equal Credit Opportunity Act*,¹ *The Fair Housing Act* (FHA),² and *The Federal Housing Enterprises Financial Safety and Soundness Act* (collectively, fair lending laws).³ The FHFA has issued this policy statement to communicate its policies for supervisory oversight and enforcement of fair lending matters, as well as to provide a foundation for possible future interpretations and rulemakings by the agency for its regulated entities.⁴ By issuing the policy, the FHFA brings itself into alignment with the Department of Housing and Urban Development, Department of Justice, Department of Treasury, Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, Federal Trade Commission and National Credit Union Administration (NCUA), which jointly issued a policy statement in 1994.⁵

¹ 15 U.S.C. § 1691 *et seq.*

² 42 U.S.C. § 3601 *et seq.*

³ 12 U.S.C. § 4501 *et seq.*

⁴ Policy Statement on Fair Lending, 86 F.R. at 36,200.

⁵ Policy Statement on Discrimination in Lending, 59 Fed. Reg. 18,266 (Apr. 15, 1994).

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General Comments

As member-owned, not-for-profit financial cooperatives, credit unions are more likely than banks to hold their mortgage loans in portfolios. Given that the GSEs buy most mortgages originated for U.S. homebuyers, their standards and policies have a substantial impact on lender underwriting requirements and policies across the country. Even for loans not acquired by the GSEs, qualification for sale to a GSE remains an industry benchmark. Because of the significant reach of GSE policies, anything short of robust fair lending oversight and supervision of GSE policies will frustrate the goals of fair lending laws and exacerbate existing inequalities in access to homeownership for all Americans.

Because of the criticality of access to the secondary market provided by the GSEs and the liquidity provided by the FHLBanks, compliance with requirements and policies set by these entities is important to the strategic plan and safe and sound operations of credit unions. Credit unions' obligation to meet GSE requirements in underwriting mortgage loans therefore may represent a legitimate interest that cannot be met in any other manner. It is therefore critical to the goals of the FHA that the FHFA carefully consider any discriminatory effects of the policies of the GSEs and FHLBanks. Credit unions should not be in a position of being torn between serving all their members and the necessity of compliance with GSE requirements and access to the secondary market. Substantial fair lending oversight of the GSEs and FHLBank policies is necessary to ensure that the goals of fair lending laws can be met at all levels of our housing finance system.

As the FHFA considers monitoring and information gathering related to its fair lending oversight, it must ensure that it does not create additional data reporting burdens for lenders. The GSEs currently receive substantial amounts of data through existing processes. Further, significant amounts of publicly available mortgage lending data are already reported to the Consumer Financial Protection Bureau (CFPB) and Federal Financial Institutions Examination Council (FFIEC) under *The Home Mortgage Disclosure Act* (HMDA) and its implementing regulations.⁶ FHFA requirements should be carefully calibrated to ensure that the GSEs and FHLBanks are leveraging existing data, rather than establishing new data collections. While additional reporting requirements may seem innocuous in the context of large mortgage originators, they can be extremely burdensome for smaller lenders like many credit unions. In the United States, more than one-third of all credit unions employ five or fewer full-time employees. These smaller credit unions nonetheless play an important role in offering financial products and services for their communities, and the FHFA must ensure that access to the GSEs and the secondary market remains equally available to credit unions of all sizes.

Further, when setting supervisory expectations regarding the GSE's lending partners, the FHFA should recognize existing oversight in the form of fair lending, consumer protection and safety and soundness examinations already conducted by the CFPB, NCUA, and other prudential regulatory agencies. The GSEs' requirements for origination partners should be tuned to the fair lending risk presented by those partners, including the degree of existing oversight and the unique features of those partners. This must include an awareness of credit unions' limitations to serve only consumers who fall within the credit union's field of membership.

⁶ See 12 U.S.C. § 2801 *et seq.*; 12 C.F.R. § 1003.1 *et seq.* See also, FFIEC, HMDA Data Browser, available at <http://ffiec.cfpb.gov/data-browser>.

A federal credit union may only lend to its members and members of a federal credit union must share a common bond. This common bond must consist of one of the following: (a) one or more groups, each with a common bond of occupation or association; or (b) a common bond of persons or organizations within a well-defined local community, neighborhood, or rural district. This unique limitation on credit union lending can generate false positive markers for fair lending concerns in statistical analyses. It is essential that the FHFA's expectations and GSE policies anticipate these issues and maintain necessary flexibility for credit unions, especially as federally-insured credit unions are already examined for fair lending compliance by the NCUA.

Lastly, wherever possible, the FHFA should avoid creating resource constraints or additional costs to lenders when establishing due diligence, oversight, or audit requirements for the GSEs' management of their originating partners. For example, credit unions report that the existing cadence and scope of the Mortgage Origination Risk Assessment (MORA) process is sufficient, reasonable, and helpful. Additional MORAs would be unnecessary and burdensome. Further, there are already multiple existing layers of audit and certification processes for partnering with wholesalers, sub-servicers, and other entities. The FHFA must appreciate that even slight changes to the GSEs' obligations in this area can have a significant trickle-down effect which could push smaller credit unions out of full participation in the mortgage origination system.

HCUA applauds the FHFA for its policy statement and commitment to ensuring the comprehensive fair lending oversight of its regulated entities, particularly the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the government-sponsored enterprises or GSEs). As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Bradley D. Douglas". The signature is written in a cursive, flowing style.

Brad Douglas
President/CEO