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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:

The Credit Union National Association (CUNA) represents America's credit unions and their more than 120 million members. On behalf of our members, we are writing in response to the recent Policy Statement on Fair Lending by the Federal Housing Finance Agency (FHFA).¹ CUNA 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).

Background

As the primary regulator for the GSEs and the Federal Home Loan Banks (FHLBanks), the FHFA has the obligation to supervise these entities' compliance with *The Equal Credit Opportunity Act*,² *The Fair Housing Act* (FHA),³ and *The Federal Housing Enterprises Financial Safety and Soundness Act* (collectively, fair lending laws).⁴ 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.⁵ 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

¹ Policy Statement on Fair Lending, 86 Federal Register 36199 (July 9, 2021).

² 15 U.S.C. § 1691 *et seq.*

³ 42 U.S.C. § 3601 *et seq.*

⁴ 12 U.S.C. § 4501 *et seq.*

⁵ Policy Statement on Fair Lending, 86 Fed. Reg. at 36200.

Corporation, Federal Trade Commission and National Credit Union Administration (NCUA), which jointly issued a policy statement in 1994.⁶

General Comments

In 2020, credit unions collectively originated an astounding total of \$290 billion in first-lien mortgages, a \$110 billion, 61% increase over the prior year.⁷ This occurred against a backdrop of massive mortgage refinancing activity – propelled by record-low mortgage interest rates. Overall, credit unions sold \$120 billion in first-lien mortgages into the secondary market during 2020 – an amount equal to 42% of total originations during the year.⁸ As member-owned, not-for-profit financial cooperatives, credit unions are more likely than banks to hold their mortgage loans in portfolio. In 2019, a full 52% of all mortgage originations were acquired by the GSEs.⁹ In the first six months of 2020, 62% of all mortgage originations were acquired by the GSEs.¹⁰ 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.¹¹ 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 which 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

⁶ Policy Statement on Discrimination in Lending, 59 F. R. 18266 (Apr. 15, 1994).

⁷ National Credit Union Administration (NCUA) credit union call report data; CUNA analysis.

⁸ *Id.*

⁹ FHFA, National Mortgage Database.

¹⁰ *Id.*

¹¹ See, e.g., Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 F. R. 6407, 6487 and 6505 (January 30, 2013).

(FFIEC) under *The Home Mortgage Disclosure Act* (HMDA) and its implementing regulations.¹² 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.¹³ Over 21% of credit unions have less than \$10 million in assets, and credit unions with less than \$100 million in assets account for over 65% of all U.S. credit unions.¹⁴ 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.

Pursuant to *The Federal Credit Union Act* (FCU Act), a federal credit union may only lend to its members.¹⁵ Members of a federal credit union must share a "common bond."¹⁶ 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.¹⁷ 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.

¹² 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>.

¹³ NCUA March 2021 Call Report Data, CUNA Analysis.

¹⁴ *Id.*

¹⁵ 12 U.S.C. § 1759; see also, NCUA Legal Opinion Letters 1995-0206 (Mar. 15, 1995) available at <https://www.ncua.gov/regulation-supervision/legal-opinions/1995/credit-card-nonmember-sponsor>, 1995-0616 (June 1995) available at <https://www.ncua.gov/regulation-supervision/legal-opinions/1995/acceptance-nonmembers-joint-applicants-loan>, and 2000-0605 (Aug. 2000) available at <https://www.ncua.gov/regulation-supervision/legal-opinions/2000/permissibility-nonmember-co-borrower>.

¹⁶ 12 U.S.C. § 1759. It is important to note that credit unions have a dual chartering system and can be federally-chartered under the FCU Act, or state-chartered under an individual state's adopted credit union act. As cooperatively-owned financial institutions, all credit unions are membership-based organizations, however this discussion will be based on the FCU Act for the sake of brevity, as state credit union acts can vary in their language and application. According to National Credit Union Administration Call Report Data, as of March 31, 2021, approximately 62% of all federally-insured credit unions were federally-chartered.

¹⁷ 12 U.S.C. § 1759(b).

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.

Conclusion

On behalf of America's credit unions and their more than 120 million members, CUNA 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. If you have questions or if we can be of any assistance, please do not hesitate to contact me at (202) 503-7184 or elaberge@cuna.coop.

Sincerely,

A handwritten signature in black ink that reads "E Young LaBerge". The signature is written in a cursive, flowing style.

Elizabeth M. Young LaBerge
Senior Director of Advocacy & Counsel