



September 7, 2021

Acting Director Sandra L. Thompson
Federal Housing Finance Agency
Constitution Center
400 Seventh Street, SW
Washington, DC 20219

Re: Policy Statement on Fair Lending; Comment Request 2021-N-7

Dear Acting Director Thompson,

Thank you for the opportunity to submit comments regarding the Federal Housing Finance Agency (FHFA)'s *Policy Statement on Fair Lending*.

The National Community Reinvestment Coalition (NCRC) consists of more than 600 community-based organizations, fighting for economic justice for almost 30 years. Our mission is to create opportunities for people and communities to build and maintain wealth. NCRC members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, fair housing and civil rights groups, minority and women-owned business associations, and housing counselors from across the nation. In addition, NCRC and its members work to create wealth opportunities by eliminating discriminatory lending practices, which have historically contributed to economic inequality.

The Government Sponsored Enterprises (GSE) play a significant and important role in ensuring the liquidity of the U.S. housing market. It is in the public interest for the GSEs to ensure compliance with federal fair lending laws. It is even more vital that the FHFA takes an active role in the critical work of fair lending supervision and enforcement to ensure a fair housing marketplace for all. NCRC believes that strong fair lending oversight includes incorporating the definition of sex as defined by *Bostock* and increased data transparency and frequency.

The FHFA should clarify that its definition of sex discrimination is consistent with the Supreme Court's *Bostock v. Clayton County* ruling.

The FHFA's policy statement on fair lending acknowledges that the Enterprises are prohibited from discriminating based on sex. However, it does not state whether the FHFA's definition of sex discrimination encompasses discrimination based on sexual orientation or gender identity.

The NCRC supports a definition of sex discrimination consistent with the Supreme Court's ruling in *Bostock v. Clayton County*.¹ In *Bostock*, the Supreme Court ruled on whether firing an employee for being gay or transgender violates Title VII of the Civil Rights Act of 1964. Even though Title VII does not mention sexual orientation or gender identity, the decision held that such discrimination should be regarded as sex discrimination.

In the wake of the *Bostock* ruling, several federal agencies have announced that they will interpret sex discrimination in a manner consistent with the *Bostock* ruling. In February 2021, HUD announced that it would "fully enforce the Fair Housing Act to prohibit discrimination on the basis of gender identity or sexual orientation."² The following month, the CFPB issued a similar statement, declaring that the prohibitions against sex discrimination in ECOA and Regulation B include sexual orientation discrimination and gender identity discrimination.³

The NCRC would welcome such a statement from the FHFA. It would clarify that the GSEs will be held accountable if they subject LGBTQ+ individuals to discrimination. It would also send a strong message that the FHFA is taking a thorough, assertive approach to civil rights enforcement.

There is mounting evidence the LGBTQ+ community is subject to discrimination when seeking home loans. For example, a recent study by NCRC showed that same-sex couples who apply for mortgage loans are more likely than different-sex couples to be denied loans and to pay higher interest rates when approved.⁴ Another study, conducted by Iowa State University, showed that same-sex couples are three to eight percent less likely than different-sex couples to be approved for mortgage loans.⁵ In light of this evidence, it is crucial to set a clear standard for the GSEs that discrimination against the LGBTQ+ community has no place in their operations.

DATA Transparency and Frequency

¹ *Bostock v. Clayton Co.*, 140 S. Ct. 1731 (2020).

² Dept. of Housing and Urban Development, "*HUD to Enforce Fair Housing Act to Prohibit Discrimination on the Basis of Sexual Orientation and Gender Identity*," Feb. 11, 2021, https://www.hud.gov/press/press_releases_media_advisories/hud_no_21_021.

³ Consumer Financial Protection Bureau, "*CFPB Clarifies That Discrimination by Lenders on the Basis of Sexual Orientation and Gender Identity is Illegal*," March 9, 2021, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-clarifies-discrimination-by-lenders-on-basis-of-sexual-orientation-and-gender-identity-is-illegal/>.

⁴ Jason Richardson and Karen Shakira Kali, "*Same-Sex Couples and Mortgage Lending*," National Community Reinvestment Coalition, June 22, 2020, <https://ncrc.org/same-sex-couples-and-mortgage-lending/>.

⁵ Hua Sun and Lei Gao, "*Lending Practices to Same-Sex Borrowers*," Proceedings of the National Academy of Sciences to the United States of America, May 7, 2019, <https://www.pnas.org/content/116/19/9293>.

i. GSE Fair Lending Reports and Data Should Be Disclosed on a Quarterly Instead of Annual Basis.

The FHFA Director is responsible for ensuring that the GSEs are operated consistent with the public interest.⁶ This requires aligning the programs and activities of FHFA with the purposes of the Fair Housing Act, the Equal Credit Opportunity Act, and the Safety and Soundness Act.⁷ In accordance with FHFA's obligation to act in the public interest, FHFA requires the GSEs to submit quarterly reports and data to assess fair lending performance.⁸ Consistent with FHFA's obligation under the Safety and Soundness Act, FHFA then makes a yearly public disclosure of loan-level data submitted by the GSEs on the loans they purchase, except for certain proprietary information and borrower privacy information.⁹

This is an important step but not sufficient. We request that FHFA continue to act in the public interest by releasing reports and data quarterly instead of yearly. FHFA requires that fair lending reports and data be submitted quarterly to FHFA. We anticipate that a shift from annual to quarterly public disclosures will place a minimal burden on FHFA.

Publicly available data on the demographics of applicants exposes racial and gender disparities and focuses the attention of the lending industry, policymakers, regulators, and community-based organizations on reducing those disparities and combating instances of discrimination in appraisal and other housing practices. By increasing the frequency of data being released to the public, we can engage in effective policymaking through transparent data that allows a wide range of stakeholders to assess and debate the evidence. Without this increase, we risk inefficient outcomes and worsening inequalities in the housing market.

ii. Add Appraisal Data to the Publicly Released Data.

We appreciate FHFA publicly releasing comprehensive data sets on the GSEs. [footnote to the most recent release] However, we request that FHFA expand its publicly released data set by including appraisal data. FHFA is aware of the risks in appraisal practices, including appraisal bias, as indicated by FHFA's December 2020 "Request for Information on Appraisal-Related Policies, Practices and Processes".¹⁰ Therefore, we believe it would be consistent with FHFA's

⁶ Duties and Authorities of Director, 12 U. S.C. § 4513(a)(l)(B)(v) (1992).

<https://www.law.cornell.edu/uscode/text/12/4513>.

⁷ Federal Housing Finance Agency, Order No. 2021-OR-FHLMC-2, June 1, 2021, available at:

<https://www.fhfa.gov/SupervisionRegulation/LegalDocuments/Documents/Orders/FRE-Final-Order-re-Fair-Lending-Reporting.pdf>.

⁸ *Id.*

⁹ Federal Housing Finance Agency: Division of Housing Mission & Goals (2020). *Annual Housing Report January 1, 2019- December 31, 2019*. Federal Housing Finance Agency. Available at:

<https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Annual-Housing-Report-2020.pdf>.

¹⁰ Federal Housing Finance Agency (2020). *Request for Information on Appraisal-Related Policies, Practices, and Processes*. Federal Housing Finance Agency. Available at:

<https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/RFI-Appraisal-Related-Policies.pdf>.

goals to publicly release appraisal data with FHFA's public disclosures. As GSEs already collect appraisal information, we anticipate a minimal burden to include appraisal data in FHFA's publicly released data sets.

We further ask that FHFA ensure public data sets are simple to interpret and access. Through an expanded and accessible data set, we have an improved ability to track disparate treatment accurately and efficiently. These modifications will also increase transparency between FHFA and stakeholders.

We appreciate that FHFA must balance the public's need for comprehensive and accessible data disclosure with the risk of releasing data that might violate loan applicants' privacy. But we believe that there is a limited privacy risk. The FHFA Public Use Database (PUDB) is not well suited as a mass identification data source because it is very difficult to identify borrowers using PUDB. The PUDB database has no personally identifiable information such as street address or Social Security numbers. Furthermore, even if FHFA data is released on a more frequent basis, there will still be a time lag between the initial collection of data and the public release of data. These limits will make it challenging for a party to identify individual borrowers for marketing or other purposes.

NCRC appreciates the opportunity to comment on FHFA's *Policy Statement on Fair Lending*. For more information, please do not hesitate to contact me or Brad Blower, General Counsel, at bblower@ncrc.org.

Sincerely,

Jesse Van Tol
President and CEO