

September 7, 2021

Via email: RegComments@fhfa.gov

Federal Housing Finance Agency
Clinton Jones, General Counsel
Attn: Policy Statement; Comment Request: (2021-N-7)
400 Seventh Street SW
Washington, DC 20219

Re: Comments on Notice of Approval and Adoption of Policy Statement (Docket No. 2021-N-7; Comment Request 2021-N-7)

Dear Mr. Jones:

The following comments are submitted by International Bancshares Corporation (“IBC”), a publicly-traded, multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains 186 facilities and 281 ATMs, serving 87 communities in Texas and Oklahoma through five separately chartered banks ranging in size from approximately \$400 million to \$10 billion, with consolidated assets totaling over \$15 billion. IBC is one of the largest independent commercial bank holding companies headquartered in Texas.

This letter responds to the notice of approval and adoption of policy statement (“Policy”) issued by the Federal Housing Finance Agency (“FHFA”) regarding the FHFA’s general position on monitoring and information gathering, supervisory examinations, and administrative endorsement related to the Equal Credit Opportunity Act (“ECOA”), the Fair Housing Act (“FHA”), and the Federal Housing Enterprises Financial Safety and Soundness Act (“FSSA,” collectively, the “fair lending laws”).

The FHFA states that:

FHFA is committed to ensuring that its regulated entities operate consistently with the public interest and with sufficient overall risk management by providing fair, equitable, and nondiscriminatory access to credit and housing....FHFA will engage in comprehensive fair lending oversight of its regulated entities and adopts the following high-level policies to guide its fair lending monitoring, supervision, and enforcement. FHFA is committed to interagency engagement, coordination, and collaboration in fair lending.... FHFA has broad statutory authority to supervise the regulated entities, including authority to monitor and gather information, conduct supervisory examinations, and enforce compliance with law where appropriate. FHFA monitors regulated entities for fair lending risk, conducts supervisory examinations, and, when necessary, takes enforcement action to ensure compliance with fair lending laws. (Policy at 36200-01)

IBC Comment: The FHFA has stated that the Policy does not create or confer any substantive or procedural rights which could be enforceable in any administrative or civil proceeding. (Policy at 36200) And while that appears to be technically accurate, IBC is concerned that the Policy, while generally non-objectionable, will result in further restrictions, prohibitions, and requirements being placed by the regulated entities on mortgagees and other stakeholders at such a crucial time. While FHFA's supervisory authority under the Policy is generally limited to the regulated entities, IBC is concerned that mortgagees, like itself, should be prepared for the regulated entities to flow down additional and/or enhanced requirements related to fair lending or a servicer's monitoring of its fair lending (and fair servicing) practices. For purposes of this Letter, "regulated entities" includes Fannie Mae and Freddie Mac (the "Enterprises"), and the Federal Home Loan Banks. IBC expects additional announcements, based on the Policy, on racial equity, fair lending, and fair servicing from nearly all regulatory bodies that oversee the housing and credit industries. The state of the housing market, as well as the current and quickly expiring emergency measures implemented in response to the COVID-19 pandemic, simply cannot bear additional uncertainty and handcuffing of mortgagees and servicers. The Policy may result in a waterfall of new and aggressive measures by the regulated entities as a both pro-active and reactive response to the FHFA's signaling of increased focus on fair lending.

For example, along with the Policy, the FHFA issued an orders to both Fannie Mae and Freddie Mac ("Orders") regarding fair lending compliance and reporting. (available at <https://www.fhfa.gov/SupervisionRegulation/LegalDocuments/Documents/Orders/FNM-Final-Order-re-Fair-Lending-Reporting.pdf>) The Orders require each Enterprise to "quarterly provide to FHFA the information and data needed to assess its fair lending performance as required by Attachment I hereto, the 'Fair Lending Regular Reporting Instructions.'" The Orders further provide that the FHFA may request special reports related to fair lending. While these are not requirements applicable to banks and other regulated lending institutions, the reporting requirements, as well as the FHFA's increased focus on fair lending, will clearly have an effect on such banks and institutions. The Enterprises will likely increase their own reporting and documentation requirements on lenders originating federally-related loans in which the Enterprises have or will have an interest or oversight authority. Without clear insight into or direction regarding what, if any, new obligations or restrictions will ultimately flow down to lenders, IBC believes the FHFA should treat very lightly lest it risk throwing an already historically unprecedented housing and lending market completely out of balance. Moreover, the FHFA should be cautious in increasing the reporting, monitoring, and information gathering requirements of the regulated entities, as that may result in an increased time and cost burden on banks and other mortgagees and servicers which, functionally, would be an unfunded mandate.

If the FHFA has specific concerns regarding the state of fair lending, it would be better served addressing those concerns in targeted, precise action as opposed to a general policy statement. The FHFA clearly believes that fair lending is an important area of concern. Given the importance, the FHFA should act decisively and clearly and ensure that its guidance and any additional burdens are articulated in a direct manner, as

opposed to allowing such additional burdens to be trickled down in a piecemeal manner through the regulated entities.

To the extent other regulatory agencies are authorized to oversee and enforce the various fair lending laws, the FHFA should work with those agencies to implement and manage a standardized regulatory regime. For example, the Policy states that the Department of Housing and Urban Development (“HUD”) and the Consumer Financial Protection Bureau (“CFPB”) share responsibility with the FHFA in overseeing and enforcing ECOA and the FHA. (Policy at 36200-01) Recently, the FHFA and HUD entered into a memorandum of understanding regarding fair lending and the two agencies’ related responsibilities (“MOU”). The FHFA’s announcement of the MOU states that:

Under the [MOU], the two Agencies will focus on enhancing their enforcement of the Fair Housing Act, which HUD is primarily charged with administering and enforcing, and their oversight of [the regulated entities], all of which FHFA regulates.

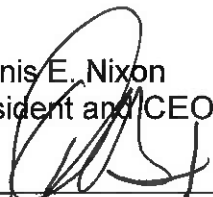
The MOU is an important mechanism that strengthens the Agencies' ability to enforce fair housing and fair lending requirements, by promoting information sharing, coordination on investigations, compliance reviews, and the ongoing monitoring of the Enterprises.¹

IBC strongly recommends the FHFA work with the CFPB and any other relevant agencies to ensure clear, consistent, and uniform regulatory oversight and action regarding fair lending. The only thing worse than an onerous regulatory regime is a confusing and unpredictable one. Clearly the FHFA acknowledges other regulator stakeholders, and it should continue to reach out to and work with those parties to ensure consistency in the fair lending regulatory requirements. This coordination is particularly important in order to protect the stability and flexibility of the housing and lending markets in light of the COVID-19 pandemic and the government response.

Thank you for the opportunity to share IBC’s view.

INTERNATIONAL BANCSHARES CORPORATION

Dennis E. Nixon
President and CEO



¹ Available at <https://www.fhfa.gov/Media/PublicAffairs/Pages/HUD-AND-FHFA-Announce-Collaboration-to-Advance-Fair-Housing-and-Fair-Lending-Enforcement.aspx>