

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
THE FEDERAL HOUSING FINANCE AGENCY
REGARDING FAIR HOUSING AND FAIR LENDING COORDINATION**

I. Purpose

a. The U.S. Department of Housing and Urban Development (HUD) and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) set forth this Memorandum of Understanding (MOU) to enhance effective and efficient enforcement of the Fair Housing Act and oversight of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).

b. This MOU between HUD and FHFA promotes interagency consultation and coordination regarding the regulated entities, prevents duplication of Federal efforts, enhances oversight of the regulated entities, and supports enforcement of the Fair Housing Act.

II. Background

a. The Agencies have statutory responsibilities with respect to Enterprise fair lending compliance.

HUD is responsible for enforcing the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and has implemented regulations for section 4545 of the Federal Housing Enterprises Safety and Soundness Act, 12 U.S.C. §§ 4501-4642 (Safety and Soundness Act). The Safety and Soundness Act authorizes HUD to “review and comment on the underwriting and appraisal guidelines” of the Enterprises “to ensure that such guidelines are consistent with the Fair Housing Act and [section 4545 of the Safety and Soundness Act].” 12 U.S.C. § 4545(6). The Fair Housing Act also authorizes HUD to enforce the Fair Housing Act against entities, including the Enterprises, following receipt of a private complaint or after opening an investigation under a HUD Secretary-initiated investigation or complaint.

FHFA is the primary regulator for the Enterprises and the Federal Home Loan Banks (regulated entities). 12 U.S.C. §§ 4501-4642. FHFA has broad statutory authority to supervise the regulated entities, including authority to monitor and gather information and conduct supervisory examinations, and enforce compliance with applicable law. 12 U.S.C. §§ 4511; 4514; 4517; and 4631. FHFA engages in

comprehensive fair lending oversight to ensure Enterprise compliance with the Fair Housing Act, ECOA, and the fair lending provisions of the Safety and Soundness Act.

b. Section 3608(d) of the Fair Housing Act requires Federal agencies having regulatory or supervisory authority over financial institutions to “cooperate with the [HUD] Secretary to further [the] ... purposes” of the Fair Housing Act. Executive Order 12892 requires HUD to “develop memoranda of understanding ... to provide for consultation and coordination of Federal efforts to further fair housing ... including coordination of the investigation of complaints.” The Fair Housing Act’s implementing regulation at 24 C.F.R. § 103.220 permits HUD to “seek the cooperation and utilize the services of Federal . . . agencies, including any agency having regulatory or supervisory authority over financial institutions.”

III. Consultation and Coordination

a. When appropriate, HUD and FHFA may meet and share information concerning current and contemplated fair lending investigations, examinations or compliance reviews, ongoing monitoring of the Enterprises, and other fair lending activity, including but not limited to opportunities for HUD and FHFA to administer their respective programs and activities relating to housing and urban development in a manner to further the purposes of the Fair Housing Act. The meetings will provide an opportunity for the Agencies to support each other’s fair lending activities and consider the possibility of coordinated actions where there are common issues or parties. In these discussions, HUD and FHFA will adhere to its respective agency’s information sharing requirements, confidentiality requirements and privileges, and other information management requirements. The Agencies may establish a regular schedule for consultation and coordination meetings.

b. HUD’s Director of the Office of Systemic Investigations in the Office of Fair Housing and Equal Opportunity or designee is HUD’s liaison. FHFA’s Supervisory Policy Analyst of the Office of Fair Lending Oversight in the Division of Housing Mission and Goals or designee is FHFA’s liaison. Communication under this MOU will be through the liaisons unless mutually agreed upon by the agencies. Each Agency will be responsible for designating additional attendees of the consultation and coordination meetings and other activities under this MOU. Each Agency will determine the role of legal counsel in activities under this MOU.

c. The Agencies may consult on any fair lending matter related to the Enterprises, including with regard to investigative approaches and activities to further fair lending. Additionally, the Agencies may, each at their own discretion,

consult on any matter regarding potential violations of fair lending law and potential investigations, examinations, or reviews of an Enterprise's activity. Consultation on potential violations of fair lending law is not limited to the Enterprises. The Agencies will notify each other of relevant fair lending complaints or fair lending investigations. This provision does not limit an Agency's discretion as appropriate to provide or withhold information relevant to possible violations of the Fair Housing Act to the other Agency.

d. Each Agency will strive to provide the other Agency advance notice before opening any fair lending investigation, examination, or review of an Enterprise, including information on the scope. Upon any such notice from HUD related to a fair lending review or investigation, including a review of the underwriting or appraisal guidelines of an Enterprise pursuant to 12 U.S.C. § 4545, FHFA may facilitate HUD's review, as appropriate. FHFA shall make best efforts to provide HUD an opportunity to comment on any significant adverse examination finding of a violation or enforcement action related to the Enterprises' appraisal or underwriting guidelines that may impact HUD's enforcement of the Fair Housing Act or section 4545 of the Safety and Soundness Act before undertaking final action.

e. An Agency will strive to provide the other Agency advance notice and an opportunity to comment on any significant fair housing or lending regulations or guidance that relate to or significantly impact Enterprise compliance with fair lending requirements.

f. This MOU promotes agency coordination but does not restrict or limit in any way either Agency's authority to act under its authorities.

IV. Complaints

a. HUD will provide FHFA a periodic digest of information on complaints accepted for filing under the Fair Housing Act against a regulated entity. Upon request, HUD will provide FHFA a copy of the complaint.

b. FHFA will provide HUD a periodic digest of information on consumer complaints submitted to FHFA or a regulated entity that may constitute a violation of the Fair Housing Act. Upon request, FHFA will provide HUD a copy of the consumer complaint.

c. HUD may request to utilize the services of FHFA in addressing a Fair Housing Act complaint pursuant to 24 C.F.R. § 103.220 to the extent this complies with Section XIV below. Any transfer of resources between Agencies must be confirmed by an appropriate funding agreement as required by Section XIV.

d. FHFA may, from time to time, request information from HUD regarding Fair Housing Act complaints related to counterparties of its regulated entities, and complaints involving properties that serve as collateral for mortgage-related transactions involving its regulated entities. In its discretion, HUD may share information regarding such complaints with FHFA.

v. Coordination of Examination and Review Activities

a. When appropriate, HUD and FHFA may coordinate and share information on their respective fair lending examination and review activities of the Enterprises related to underwriting and appraisal guidelines (“coordinated reviews”). This MOU does not require either agency to engage in coordinated reviews of the Enterprises and is not intended to interfere with an Agency’s authority, discretion, or internal operations.

b. Where both HUD and FHFA determine that they will take actions with respect to a common set of issues, facts, respondents, or other matters under their respective authorities, each will strive to coordinate its action(s) in a manner that is consistent and complementary and to determine whether continued information sharing and coordination of the Agencies’ respective actions is necessary and appropriate. If the Agencies disagree about any aspect of the coordinated reviews, at each Agency’s discretion, they may cease coordination and proceed independently.

c. FHFA considers any information it obtains as part of coordinated reviews, including information obtained through and analysis completed by HUD, to be confidential supervisory information subject to 12 C.F.R. part 1214. No privileges are waived by sharing of information.

vi. Referrals to FHFA

a. In making a referral under 24 C.F.R. § 81.47(a), HUD will provide FHFA with information explaining the basis for the referral and any relevant documents after communicating to an Enterprise that it may be violating 12 U.S.C. § 4545, 24 C.F.R. §§ 81.41-.47, or the Fair Housing Act. HUD shall also provide its views on violations or potential violations and possible corrective action.

b. With respect to complaints and other matters referred by HUD to FHFA, FHFA, at its sole discretion, may use its regulatory, supervisory, and administrative enforcement authority to address violations or potential violations in accordance with applicable FHFA enforcement authority and policy. FHFA may also determine, at its sole discretion, to take action as conservator to resolve identified issues during the term of any conservatorship of an Enterprise.

c. FHFA will consult with HUD throughout the process of contemplating or taking action following a referral under 24 C.F.R. § 81.47(a) and notify HUD of final actions it has determined to take. This MOU does not modify any authority that HUD has to take action under its own authorities with respect to information supporting a referral to FHFA.

VII. Information Sharing and Confidentiality

a. The agency providing or sharing information under this MOU (“Providing Agency”) may request that certain information regardless of written, verbal, or electronic format be treated as confidential (“Confidential Information”) and protected from disclosure by the agency receiving the information (“Receiving Agency”) under the terms of this MOU.

b. Pursuant to 32 C.F.R. Part 2002, FHFA has implemented a Controlled Unclassified Information (CUI) Program. All FHFA Non-Public Information as defined in 12 C.F.R. § 1214.1 is CUI, and all FHFA CUI shall be considered Confidential Information for the purposes of this MOU. Confidential Information may also include Confidential Supervisory Information as defined in 12 C.F.R. Part 1214.

c. In order to ensure that certain information provided by the Providing Agency is accorded confidential treatment, the Providing Agency shall clearly designate those portions of the information it wishes to be treated as confidential with a suitable form of notice such as “Confidential Treatment Requested by [the Providing Agency].” FHFA Non-Public Information will generally be marked “CONTROLLED” and FHFA information containing personally identifiable information (PII) will generally be marked “CONTROLLED//SP-PRVCY,” in accordance with FHFA’s CUI Program. Information marked as such shall be treated as Confidential Information.

d. Nothing in this MOU prevents the Agencies from entering into other agreements establishing separate terms for exchange of certain information which the Agencies do not wish to be exchanged pursuant to this MOU.

e. All information provided pursuant to this MOU belongs to, and shall remain the property of, the Providing Agency. To the extent permitted by applicable law, the Receiving Agency will maintain the confidentiality of the Confidential Information and will not voluntarily disclose such information to any third party without the prior written consent of the Providing Agency. In providing Confidential Information to the Receiving Agency, the Providing Agency may designate purposes for which it authorizes its lawful disclosure.

f. Information shall no longer be regarded as confidential if it:

- is or becomes publicly available, unless the public availability of the information was the result of an unauthorized disclosure;
- is or becomes known to the Receiving Agency independent of its disclosures to the Receiving Agency by the Providing Agency and does not otherwise qualify for confidential treatment;
- is provided to any other non-governmental party free from any obligation to maintain its confidentiality;
- is subsequently provided to the Receiving Agency free from any obligation to maintain its confidentiality; or
- was previously provided to the Receiving Agency free from any obligation to maintain its confidentiality.

g. Each agency agrees to establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of the Confidential Information provided pursuant to this MOU including:

- restricting access to the Confidential Information to only those of its officers, employees, or agents (including outside counsel, accountants, and consultants) who have a bona fide need for such information in carrying out the supervisory, regulatory and other responsibilities of the agency;
- informing those of its officers, employees or agents, who are provided access to the Confidential Information of their responsibilities under this MOU; and,
- establishing appropriate physical safeguards for maintaining the Confidential Information.

h. Unless prohibited by law or otherwise provided in this MOU, the Receiving Agency shall:

- promptly notify the Providing Agency in writing of any legally enforceable demand or request for the Confidential Information received by the Receiving Agency (including but not limited to subpoena, court order, or Freedom of Information Act request or Privacy Act request) to afford the Providing Agency a reasonable opportunity to respond to the demand and the Receiving Agency sufficient time to assert such legal exemptions or privileges on behalf of the Providing Agency as the Providing Agency may reasonably assert;

- support the application of the Providing Agency to intervene in any action concerning the disclosure of the Confidential Information in order to allow the Providing Agency the opportunity to assert any claims of confidentiality with respect to the Confidential Information;
- not grant any other demand or request for the Confidential Information or furnish it to any other third party, or otherwise make public the information, without giving the Providing Agency prior written notice and ten (10) business days to object to the disclosure; and,
- adhere to the requirements of federal law governing disclosure of confidential information by a government agency, including but not limited to the Privacy Act, 5 U.S.C. § 552a, as amended; the Freedom of Information Act, 5 U.S.C. § 552; and the Trade Secrets Act, 18 U.S.C. § 1905.

i. Nothing in this MOU shall prevent the Agencies from complying with a court order or, if compliance is deemed compulsory, a request or demand from a duly authorized committee of the United States Senate or House of Representatives.

j. **Privileges.** The Agencies agree that sharing of the Confidential Information pursuant to this MOU will not constitute public disclosure and in no way constitutes a waiver of confidentiality or of any applicable privileges, including the examination privilege, or waives or alters any provisions of any applicable laws governing the confidentiality or use of the Confidential Information. The Agencies expressly reserve all the evidentiary privileges and immunities applicable to the Confidential Information.

viii. Contributions of the Parties

a. The Agencies to this MOU will abide by the terms and conditions of this MOU when sharing data and information, including ensuring compliance with security protocols and relevant statutes and regulations, including the Privacy Act.

ix. Data Security and Safeguards

a. Access, Storage and Disposition of Data

The Agencies agree to provide adequate security arrangements for access to,

storage, and disposition of all input files, linked files, extracts, and printed listings/outputs, to prevent unauthorized use or disclosure of these data.

In case of any conflicting data security or safeguard updates and until written notification concerning data security and safeguards of data can be mutually agreed upon by the Agencies, each agency will adhere to the requirements of the Federal Information Security Management Act, as amended, and Office of Management and Budget guidelines to fully protect the confidentiality of each agency's data.

b. Authorized Supervision and Control

The Agencies agree that all electronic records and printouts derived from shared information will remain under the immediate supervision and control of authorized personnel in a manner that will protect the confidentiality of the information and records.

c. Records Transport

The Agencies shall ensure that data collection and sharing shall comply with the Privacy Act and shall maintain reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of the information and to protect against security threats, or unauthorized uses or disclosures of the information. Data shall be used only for the purposes of this MOU as set forth in sections I and II.

d. Ownership of Information/Data

Title to and ownership of all HUD property transferred under this MOU will reside with HUD. Title to and ownership of all FHFA property transferred under this MOU will reside with FHFA.

e. Data Custodians

The Agencies will each appoint a data custodian to be responsible for safeguarding all computer media containing identifiable data and for data files, and for ensuring that all terms and conditions of this MOU are met. If, for any reason, either agency finds it necessary to change data custodians, it will give written notification to the other agency within 30 days of the change, including the effective date of such change. In addition, the agency will be required to: (1) make a complete accounting of all records containing Confidential Information (*see* section VII) in writing; and (2) provide this accounting to the new data custodian.

HUD Data Custodians

Name: Patrina Munson
Division: Director, Office of Information Services and Communications, Fair Housing and Equal Opportunity
Agency: Department of Housing and Urban Development
451 7th St., S.W.,
Washington, D.C. 20410
Phone: (301) 928-0323

FHFA Data Custodian

Name: James Wylie
Division: Office of Fair Lending Oversight, Division of Housing Mission and Goals
Agency: Federal Housing Finance Agency
400 7th St., S.W.
Washington, D.C. 20219
Phone: (202) 649-3209

f. Reporting Attempts to Gain Inappropriate Access

All authorized employees or agents to the Agencies in this MOU are instructed to notify their supervisors of any attempts to gain inappropriate access to information or records derived from these data, whether by bribery, coercion, or other means. Each Agency will immediately report any such instance to the Agency's Data Custodian and Project Officer, who will, in turn, immediately report it to the respective Agency's Chief Information Security Officer and Privacy Officer.

g. Unauthorized Disclosure

1. The Agencies acknowledge that an unauthorized release or disclosure of information provided under this MOU may violate the terms of the Privacy Act and other applicable laws or regulations.
2. Any individual who makes an unauthorized release or disclosure of information provided under this MOU may be subject to civil and criminal penalties under the Privacy Act and other applicable laws or regulations.

h. Restrictions on Release and Use of Information and Data

The Agencies will use shared data only for the purposes set forth in this MOU or for other purposes that the Agencies may agree to in writing.

i. Return, Destruction, or Retention of Data

1. When the Agencies have no further need of the files or derivatives of such files used to complete their respective responsibilities under this MOU, they must either return the files to the originating Agency's data custodians or destroy them.
2. If FHFA or HUD determine that they have a further need for any file(s) provided by the other Party, they will consult with the other Agency to decide whether any such files should be retained. Any files that the Agencies agree to retain will be kept at FHFA or HUD.

x. Reporting Theft or Loss Of Personally Identifiable Information

a. If any of the Parties to this MOU experience a breach, theft, loss or potential loss of PII or security incident related to the HUD data or information or the FHFA data or information, the agency will notify the United States Computer Emergency Readiness Team within one (1) hour of being identified by the agency's top-level Computer Security Incident Response Team, Security Operations Center, or information technology department, as required by the US-CERT Federal Incident Notification Guidelines. The data custodian for the breached agency must notify all other agency data custodians within one (1) hour of discovery of the breach.

b. If within one (1) hour, the data custodian has been unable to speak with the other agency data custodian named in this MOU or if the breach occurs outside of normal business hours, the data custodian will contact:

HUD System Computer Incident Response Team; CIRT@hud.gov

FHFA Information Security Team; OTIMSecurityTeam@fhfa.gov. In addition, please also contact: Helpdesk@FHFA.gov, and Privacy@FHFA.gov.

c. FHFA or HUD will also implement its respective agency's policies and procedures for responding to the breach of PII in accordance with OMB Directive, OMB M-17-12, "Preparing for and Responding to a Breach of Personally Identifiable Information" (January 3, 2017). The agency that experienced a breach, theft, loss, or potential loss of PII must also provide the data custodians a detailed report of the incident as described in OMB M-17-12.

xi. Duration of MOU

a. This MOU will continue from the date of execution through December 31, 2025. At that time, the Agencies may allow this MOU to expire, renew this MOU for subsequent years or develop a new MOU. All requests to extend the duration of this MOU will be in writing and submitted to the individuals listed in section III.b. of this MOU or their successors.

b. Notwithstanding the language above, all provisions in section IX will continue for all information that the Agencies provide each other under this MOU for as long as the Agencies retain such information.

xii. Amendment and Termination

a. This MOU may be amended where approved in writing and signed by both Agencies. Either Agency may terminate this MOU at any time by providing 30 calendar days' written notice to the other Agency. Either Agency may unilaterally terminate this MOU without advance notice to the other Agency upon a breach of the security provisions or a loss of PII as set forth in section X (Reporting Theft or Loss of PII).

xiii. Expenses of Each Party

a. Each party to this MOU will bear its own expenses in connection with the preparation, negotiation, and execution of this MOU, and neither Agency shall be liable to the other agency for such expenses. Each Agency is expected to mutually benefit from this data sharing.

xiv. No Financial Obligation

a. Each of the Agencies will act as an independent Party with respect to the performance of its duties under this MOU. This MOU does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. It will not result in a transfer of resources between the Agencies. Any future transfer of funds or obligation to undertake certain work must be confirmed by an appropriate funding agreement executed by authorized officials from the agencies that are signatories to this MOU. This MOU does not give any third party any benefit, legal, or equitable right, remedy or claim under this MOU.

xv. Other Limitations

a. The Agencies agree that no information provided or discussions held pursuant to this MOU constitute a sharing or exercise of governmental regulatory authorities relating to institutions that the Agencies supervise.

b. The Agencies will consult in advance the issuance of all publicity statements with regards to this MOU.

c. Nothing in this MOU is intended to, or shall be construed to, affect, modify, or imply any conclusion regarding the jurisdiction of authority of either HUD or FHFA. Nor does this MOU affect the rights, powers or obligations of HUD or FHFA under existing law concerning the scope of the respective jurisdiction of each to supervise, examine, regulate, or bring administrative or judicial enforcement proceedings against the institutions regulated by them. Nothing in this MOU shall be construed to prevent HUD or FHFA from taking supervisory, examination, regulatory, enforcement or other action that each may deem necessary or appropriate to carry out its responsibilities as permitted by applicable law.

d. This MOU does not require an Agency to create or maintain Non-Public Information or to provide or share Non-Public Information with the other Party, and all sharing of Non-Public Information pursuant to this MOU shall be at the sole discretion of each Agency and in keeping with any disclosure regulation or policy to which such Non-Public Information may be subject as described herein including, but not limited to the Privacy Act.

xvi. Authorizing Signatures and Dates

Each signatory below warrants and represents that he/she has the competent authority on behalf of his/her respective agency to enter into the obligations and agree to the terms set forth in this Memorandum of Understanding between FHFA and HUD regarding Fair Lending Coordination.

For the U.S. Department of Housing and Urban Development

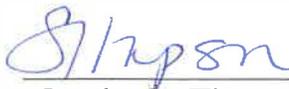


Marcia L. Fudge
Secretary
Department of Housing and Urban Development



Date

For the Federal Housing Finance Agency



Sandra L. Thompson
Acting Director
Federal Housing Finance Agency



Date