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June 21, 2022

Clinton Jones, General Counsel
Attention: Comments/No. 2022–N–6
Federal Housing Finance Agency (FHFA)
400 Seventh Street SW
Washington, DC 20219

RE: Fair Lending Oversight Data System

The undersigned professional appraisal organizations appreciate the opportunity to comment on the above-captioned system of records. While we appreciate the FHFA's efforts to better coordinate data collection and sharing efforts across the federal government, we have strong reservations about how the data will be shared and the purposes for which data is exchanged. Our concerns revolve around individual data privacy issues and the need for data to holistically represent the nature of appraisals that support housing finance transactions.

Absent clear safeguards, we believe the "Fair Lending Oversight Data System" will expose appraisers to significant unauthorized disclosures of their personally identifiable information (PII) as part of shared data, and that the data may be used to support enforcement actions under the Fair Housing Act without its full contextual basis. This may lead to an increase in enforcement actions against appraisers that, even if resolved in favor of the appraiser, will cause them to incur significant costs in mounting a defense, and could prevent the appraiser from receiving future appraisal assignments.

Regarding appraiser PII, while the appraiser's name and license number are already discoverable as part of the National Appraiser Registry – implemented and overseen by the Appraisal Subcommittee – this information is decoupled from the individual appraisal assignments the individual completes. And while only these two items are specifically listed in the Notice, it is clear that "[r]ecords maintained in the system may include but are not limited to" these two data points. To our reading, this could mean other appraiser PII, such as business address (often the same as an appraiser's home address), phone number, email address, or other PII may be included in the data system.

We believe most appraisers would be surprised to learn FHFA facilitates the hosting and wide scale sharing of their PII, as well as the breadth of intended uses for the data system (discussed in more detail below). Given the intended uses of the data system, it tracks that appraiser PII is a critical component, but this Notice and its timing – concurrent with the establishment of the data system itself – provide inadequate warning to appraisers regarding how and why their information will be collected and shared.

While FHFA provides means for an individual appraiser to learn what records are being kept about them in the data system, there is no mechanism for an appraiser to request that some or all of their PII be removed from the data system, and no exemptions are afforded under the Notice. At a minimum, we would request that FHFA provide some means for individual appraiser PII to be removed upon request, and that the removal not be subject to high thresholds for exemption from the data system.

Pivoting to the intended uses of the data system's contents, the fourteen enumerated uses make clear the primary purpose will be to facilitate the lodging of Fair Housing Act enforcement actions, primarily against appraisers. Put simply, FHFA and other agencies who will rely on this data system cannot take individual appraisals in isolation and, without applying broader context, pursue Fair Housing Act enforcement where no clear indicia of discriminatory intent exists on the part of the appraiser¹. Appraisal expertise historically has been limited within federal financial institution regulatory agencies, and this predates the complexities associated with fair housing valuation complaints. We are aware that the Department of Housing and Urban Development recently hired a certified appraiser to assist with fair housing review, and this should serve as a model for other agencies delving into valuation related fair housing complaints.

Appraisers are commonly required to utilize the Sales Comparison approach as the primary indicator of value when performing appraisal assignments intended for sale to the two entities under FHFA's conservatorship, Fannie Mae and Freddie Mac. Substantial research indicates that comparable sales in minority communities are often weighed down by prior governmental action, specifically the practice of redlining².

Lastly, we believe the data system overlooks the potential contributory role of automated underwriting and review systems commonly used in the secondary market. Each system ascribes a collateral risk score to a subject property based on information contained in the millions of appraisals each entity has gathered over the years. Critically, these systems are built on the same potentially faulty comparable sales data that appraisers are being held accountable for under the Fair Housing Act. To our knowledge, there has been no study of the effect of these quality control tools in minority communities and the extent to which collateral risk scoring may exacerbate housing inequalities both from an access and collateral value perspective.

Often, appraisers are required to respond to the outputs of these systems in service of lowering the assigned risk score so the originating lender may avoid repurchase obligations based on warrants and representations. It is conceivable that where an appraiser provides a higher appraised value to a home in a minority community, the quality control systems may question the value and through its prompts urge the appraiser to downwardly revise their opinion of value (for example, by using different comparable sales). Even if such overt prompts are not provided, appraisers may know from previous experience that delivering a higher appraised value in a historically redlined community will trigger quality control prompts and proactively choose lower valued comparable sales even where they believe market support exists for the use of higher valued comparables.

In service of providing a fuller context to the conversation of valuation bias, we would ask the FHFA to use this new data system to study the effects of Collateral Underwriter and Automated Collateral Evaluation on the availability of credit in minority communities and potential impacts on the value of

¹ To be clear, a disparate impact argument may exist based on the continued use of data known to suffer from discriminatory defects. We would argue this impact is driven at the lender and GSE level where the decision to request appraisals that rely on this data is made. The appraiser, while tasked with utilizing this information, does not have the latitude to choose data sets that may overcome these known defects, and their only remedy at present would be to reject any appraisal assignment where they believe the use of requested data sets would cause a Fair Housing Act violation.

² The Interagency Task Force on Property Appraisal and Valuation Equity, or PAVE, discusses the impact of redlining at length in its March 2022 "Action Plan to Advance Property Appraisal and Valuation Equity".

homes in these communities. With this information in hand, FHFA and others can make better informed enforcement decisions, and help Fannie Mae and Freddie Mac better calibrate their quality control systems to avoid potential discrimination.

We appreciate the opportunity to comment on the new “Fair Lending Oversight Data System”, and hope FHFA will consider the issues raised in this letter as further implementation and use occurs. If you have any questions or wish to discuss our views further, please contact John Russell, ASA, 703-733-2103, jrussell@appraisers.org; Bill Garber, Appraisal Institute, 202-298-5586, bgarber@appraisalinstitute.org; Stephen Frerichs, American Society of Farm Managers and Rural Appraisers, 703- 212-9416, sfrerichs8@comcast.net; or Steve Sousa, MBREA, 617-830-4530, steve@mbrea.org.

Sincerely,

ASA

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American Society of Farm Managers and Rural Appraisers

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