



October 3, 2022

NSTC Subcommittee on Equitable Data  
Office of Science and Technology Policy  
Eisenhower Executive Office Building  
1650 Pennsylvania Ave. NW  
Washington, DC 20504

RE: Document No. 2022-19007, Engagement and Accountability RFI

To Whom It May Concern:

These comments are submitted on behalf of the National Fair Housing Alliance (NFHA) in response to the RFI issued by the Office of Science and Technology Policy seeking input on how Federal agencies can better support collaboration with other levels of government, civil society, and the research community around the production and use of equitable data and to support Federal equitable data efforts described in the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government ([E.O. 13985](#)), including the *Vision for Equitable Data* issued to the President in April 2022.

Founded in 1988 and headquartered in Washington, D.C., NFHA leads the fair housing movement. NFHA works to eliminate housing discrimination and ensure equitable housing opportunity for all people and communities through its education and outreach, member services, public policy, advocacy, housing and community development, tech equity, enforcement, and consulting and compliance programs.

NFHA fully supports the policy laid out in E.O. 13985, which acknowledges the racial inequities that pervade our society, many created and perpetuated by policies of the federal government itself. Importantly, the EO also recognizes the benefits that will accrue to all from expanding access to opportunity for historically underserved and marginalized communities, affording everyone the opportunity to reach their full potential. Indeed, this goal aligns with the provisions of the 1968 Fair Housing Act, which require all federal agencies to administer their programs and activities relating to housing and urban development in a manner affirmatively to further fair housing.<sup>1</sup> This means federal agencies must ensure that their programs do not discriminate based on race, national origin, or other protected characteristics. Equally important, it requires agencies to design and implement their programs to eliminate the barriers and disparities caused by residential segregation, enabling equitable access to resources and amenities for all communities.

Our comments respond to questions 3-7 in the RFI.

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<sup>1</sup> See 42 U.S.C. §3608(d) and (e).

## **Fair housing is central to racial equity**

Because where a person lives determines, to a very large degree, the resources and opportunities available to them and their ability to achieve their full potential, fair access to housing must be a central component of any effort to advance racial equity and support underserved communities. NFHA's comments focus on several key areas where the federal government can play an important role in facilitating access to the data needed to advance racial equity.

For most families in this country, homeownership is a key to the middle class, providing housing and financial stability and a means to build wealth. Access to homeownership is one area where inequitable policies and practices have led to significant racial and ethnic disparities. [The Federal Reserve Bank of St. Louis reports](#) that, as of the second quarter of 2022, the homeownership rate for White households is 74.6 percent, compared to 48.3 percent for Hispanic or Latino households and 45.3 percent for Black households. The Black-White homeownership gap is as big as it was before the Fair Housing Act was passed and even 1890. These disparities in homeownership rates are a driving factor in our country's racial wealth gap: for every \$1 in wealth held by the median White household, the median Hispanic or Latino household has \$0.21 in wealth, and the median Black household has only \$0.12.<sup>2</sup> Disparities in homeownership continue to drive wealth disparities, and federal housing policies during the pandemic contributed to the widening of the Black-White wealth gap by \$20 trillion.<sup>3</sup>

## **Data needed to monitor mortgage loan performance and foreclosure activity**

These stark disparities underscore the importance of rooting out discrimination in our housing markets and preventing the loss of homeownership among households of color. We cannot accomplish these goals without data to monitor trends in the marketplace and intervene early to resolve any that are problematic. The Home Mortgage Disclosure Act (HMDA) provides public access to reasonably comprehensive data, at a geographically granular level (census tract) and including demographic information (race, gender, national origin) on applicants for mortgage loans. It has been a fundamental tool for spotting potential discrimination in the mortgage origination process.

However, we lack similarly granular and comprehensive data, widely available to the public and policymakers alike, to spot problematic trends in the mortgage market post-origination, understand their impact on homeowners and communities of color, and develop effective interventions to advance racial equity.

The foreclosure crisis spurred by the boom in abusive subprime mortgage lending targeted at communities of color over a decade ago provided a wake-up call about the critical need for such data on mortgage performance and foreclosures. Although advocates called attention early on to the alarming rise in delinquencies and foreclosures in communities of color, in the absence of comprehensive data to document the problem, policy makers failed to intervene in a timely manner and the problem spiraled,

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<sup>2</sup> Kent, Ana Hernandez and Lowell Rickets, "Wealth Gaps Between White, Black and Hispanic Families in 2019," On the Economy Blog, Federal Reserve Bank of St. Louis, January 5, 2021. Available at <https://www.stlouisfed.org/on-the-economy/2021/january/wealth-gaps-white-black-hispanic-families-2019>.

<sup>3</sup> Shawn Donnan, Ann Choi, Hannah Levitt and Christopher Cannon, "Wells Fargo Rejected Half Its Black Applicants in Mortgage Refinancing Boom," Bloomberg, (March 11, 2022), <https://www.bloomberg.com/graphics/2022-wellsfargo-black-home-loan-refinancing/>.

ultimately throwing our entire economy into crisis. To avoid a repeat of this problem, Congress included a provision in the 2010 Dodd-Frank Act requiring the new Consumer Financial Protection Bureau (CFPB) to create a national database of mortgage delinquencies and foreclosures and make that available to the public.<sup>4</sup>

Early in the COVID-19 pandemic it became evident that it, too, would cause significant disruption in the mortgage market, as the shut-down of the economy meant the disruption of people's incomes and ability to make their mortgage payments. These impacts fell disproportionately on people of color, as did the health impacts of COVID-19, raising concerns that they would bear the brunt of foreclosures and loss of homeownership. To stave off another foreclosure crisis, as part of the American Rescue Plan Act, Congress allocated nearly \$10 billion for the Homeowner Assistance Fund (HAF), enabling states, tribes and territories to set up programs designed to enable homeowners to avoid foreclosure and displacement. HAF is administered at the federal level by the U.S. Department of the Treasury.

HAF includes a provision targeting some of the funds to people deemed to be "socially disadvantaged individuals." This provision is intended to ensure that people of color, who had been hit hardest by the foreclosure crisis more than a decade ago and suffered disproportionate losses, have equitable access to foreclosure prevention resources in the COVID pandemic. To implement this provision, and to ensure that HAF is designed and administered in a manner that advances racial equity, state program administrators and the Treasury Department needed access to geographically and demographically granular data on people who were falling behind on their mortgages. Unfortunately, such data were not readily available.

Researchers at the [Urban Institute have identified](#) nine major sources of information on mortgage performance. Some of these cover large portions of the mortgage market, others are more limited. Most are reported at either the state or national level and lack the kind of detailed geographic data that would have been most helpful to state administrators designing their HAF programs. None of the large datasets that cover most of the market include the demographic data needed to advance racial equity, and most are available only at the state or national level and lack the necessary geographic granularity. The majority are available only for a fee and some are not available at all to parties outside the federal government. This latter category includes the National Mortgage Database, a joint project undertaken by the CFPB and FHFA, in part, to fulfill the mandate from the Dodd-Frank Act to create a publicly available, national database of mortgage delinquencies and foreclosures.

The result is that state HAF administrators have lacked the data they need to ensure that their programs are designed in a manner that would best advance racial equity and against which they can measure program performance. Similarly, the Treasury Department lacks the data needed to carry out its oversight responsibilities effectively, and the public lacks the contextual data that would give them confidence that their state HAF programs are functioning in a racially equitable fashion.

**Recommendation:** NFHA recommends that the federal agencies that insure or guarantee mortgages, and those agencies with oversight responsibilities for various segments of the mortgage market, work together to create a comprehensive, national database on mortgage performance, including delinquencies, forbearances, loss mitigation solutions and foreclosures. Like the HMDA data, this

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<sup>4</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 11-203, Section 1447, DEFAULT AND FORECLOSURE DATABASE. July 21, 2010.

database should be readily available to the public, include critical demographic information about borrowers, and be reported at a geographically granular level, preferably census tract.

### **Data needed to evaluate borrowers' ability to repay mortgage loans**

The Truth in Lending Act's Ability to Repay/Qualified Mortgage loan rule (ATR/QM Rule) (12 C.F.R. Part 1026) requires a creditor to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan according to its terms. Loans that meet the ATR/QM's rules for qualified mortgages (QMs) obtain certain protections from liability. Over time, different proposals have been issued to determine the definition of a QM. For example, at one point, the QM threshold was based on a debt-to-income ratio of 43 percent.

**Recommendation:** We recommend that the CFPB be required to disclose mortgage data (including GSE data) related to loans with debt-to-income ratios above 43 percent, which borrowers of color utilize to access mortgage credit. These data are needed to help shape any future discussions on QM and ensure equitable access for underserved borrowers of color.

### **Data needed to detect algorithmic bias**

Lenders often use data-driven automated underwriting systems (AUS<sup>5</sup>) to predict loan delinquency risks conditioned on borrowers' data known at the time of loan application when making a mortgage underwriting decision. Traditional fair lending testing of underwriting decisions focuses on the output of an AUS to decide if the system causes an adverse impact on any protected classes under the Fair Housing Act (FHA) and, if so, whether there are less discriminative alternatives (LDA) that could be adopted. Whereas evaluation of snapshot outcomes from an AUS could help assess the potential of the system to perpetuate statistical and/or practical significant approval disparities which may suggest violation of a fair lending law, access to the performance data of loans approved by the AUS or any other underwriting system is a critical step for equitable access to mortgage credit and other lending opportunities for consumers.

Access to performance data will help researchers and advocacy groups conduct analyses<sup>6</sup> to 1) assess consumer risks, not just model risks, associated with lenders' (automated) underwriting systems; 2) evaluate the bias in how lenders label good and bad loans; 3) make reasonable judgments on how lenders' portfolio risks are distributed across classes protected under the Fair Housing Act; and 4) propose viable less discriminatory alternatives (LDA) that can reverse the persistent racial homeownership wealth gaps and mitigate nascent risks associated with emerging algorithmic solutions in the lending market.

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<sup>5</sup> AUS or Automated Underwriting System is often used to mean automated systems like the GSEs' Desktop Underwriter (DUP), Loan Prospector (LP), or Technology Open To Approved Lenders (TOTAL). However, in this comment letter AUS has a broader scope that includes any automated system driven by business rules, business logic, data, statistical models, machine learning models, or artificial intelligence (AI).

<sup>6</sup> Joshua White et al., "Qualified residential mortgage: background data analysis on credit risk retention," August 2013. Accessed at <https://www.sec.gov/dera/staff-papers/white-papers/qrm-analysis-02-2015.pdf>.

Privacy concerns have been expressed when researchers, advocacy groups, and the public request access to granular data to support the Federal Government's equitable housing data efforts. These concerns are reasonable<sup>7</sup> in a world of big data with sophisticated algorithms and hardware innovations that can join forces to undermine consumer privacy and enterprise security.<sup>8</sup> However, there are modern software and hardware solutions that embody fundamental data protection principles that minimize personal data use, maximize data security, and empower data analysts to obtain insights from datasets without compromising personal privacy. Privacy-enhancing technologies<sup>9</sup> (PETs) like homomorphic encryption (HE), secure multiparty computation (SMPC), trusted execution environments (TEE), or robust synthetic data solutions can be used to eliminate data silos among various levels of government and foster productive collaboration among government agencies, civil society, and the research community without compromising consumer privacy and data security.

**Recommendations:** We ask the CFPB to release performance data on mortgage loans. In addition, we ask federal banking regulators, including the CFPB, to explore the privacy protection technologies described above so that they can provide access to data required to remove data-related impediments to homeownership and other economic opportunities.

#### **Data needed to monitor appraisal practices**

Evidence continues to mount that the real property appraisal and valuation system in this nation is broken. Reports from the [Biden Administration's Property Appraisal and Valuation Equity \(PAVE\) Task Force](#), the [National Fair Housing Alliance Consortium](#), and the [Philadelphia Home Appraisal Bias Task Force](#) documented systemic challenges that drive appraisal bias. For example, these reports highlight that Fannie Mae and Freddie Mac (collectively, the "Government-Sponsored Enterprises" or "GSEs"), FHFA, HUD/FHA, VA, and USDA each maintain a comprehensive database of historical appraisal reports, but those databases generally are not available to government agencies or the public for research, supervision, enforcement, or compliance management.

**Recommendations:** Consistent with the findings and recommendations in these reports, we recommend that the Administration act quickly to:

- Develop data-sharing arrangements among all relevant government agencies and pursue joint strategies to make the appraisal-related data more widely available, foster federal research, and better enable enforcement related to appraisal bias. (PAVE Action Item #5.1)
- Establish the public sharing of a subset of historical appraisal data, including that collected by the GSEs, HUD/FHA, VA, and USDA. (PAVE Research Effort #4)
- Provide public support for Congressional action to amend HMDA to provide the CFPB with the rulemaking authority to require mortgage lenders to provide valuation data, to develop a

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<sup>7</sup> Anthony Yezer, "Personal privacy of HMDA in a world of big data," October 2017. Accessed at <https://www2.gwu.edu/~iiep/assets/docs/papers/2017WP/YezerIIEP2017-21.pdf>.

<sup>8</sup> Nicolas Papernot, Patrick McDaniel, Arunesh Sinha, and Michael P. Wellman. "SoK: Security and Privacy in Machine Learning." In 2018 IEEE European Symposium on Security and Privacy. Accessed at <https://oaklandsok.github.io/papers/papernot2018.pdf>.

<sup>9</sup> See the following blog post that reviews tools and techniques that use computational methods to implement privacy methodologies, [https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2017/pet\\_201711/](https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2017/pet_201711/)

publicly available database (which may need to suppress/modify certain fields for privacy), and to create a Trusted Researcher Program. “Trusted Researchers” would have access to the fields not provided to the general public due to privacy concerns.

### **Data needed to coordinate across programs and agencies**

Consistent with E.O. 13985, the Biden-Harris administration is launching a number of efforts to incorporate racial equity considerations into federal programs with significant impacts on communities in the U.S. These programs span areas including housing, transportation, the environment and many others, and involve a host of federal agencies. For example, the Department of Transportation recently entered into a [memorandum of understanding](#) with the Departments of Housing and Urban Development and Energy and the Environmental Protection Agency to work together to ensure the development of a transportation system that is both equitable and decarbonized. DOT and HUD are partnering on the [Thriving Communities Initiative](#) to improve and foster thriving communities through transportation initiatives. HUD is in the process of promulgating a new Affirmatively Furthering Fair Housing regulation, which will direct its grantees to assess their programs to ensure they are not discriminatory and take action to eliminate any barriers to fair housing for members of protected classes. This analysis should include consideration of the access to transportation, educational, environmental, employment and other resources available to residents in different neighborhoods.

Many of these programs affect the same communities, and people living in those communities do not experience these as distinct issues. Rather, these different programs and issues impact various aspects of life in their neighborhoods: the quality of the air they breathe, the availability of safe, affordable housing that is suitable for their families, and the transportation systems upon which they rely. In other words, considerations of racial equity are intersectional. Each issue affects other issues, and their collective impact may be greater than the sum of their individual impacts. They cannot be addressed through siloed analyses and programs but must be understood as a whole.

This kind of holistic understanding depends on the availability of data for each of its elements; data that can be compared, compiled, cross-tabulated and overlaid to understand the totality of the impacts on a particular place. This can best be accomplished when data are compiled and reported in a consistent format, so that data from one federal agency is compatible with data from other agencies.

### **Recommendations:**

NFHA recommends that OMB explore ways to standardize data reporting throughout all federal agencies to enhance compatibility of federal datasets. To further enhance racial equity efforts, whenever possible, data should be reported at the census tract level. This would enable analyses at scales ranging from the neighborhood level up through the state or national level. In addition, data should be made available in formats that are readily accessible to and usable by people with limited resources, not just researchers with sophisticated tools available. It should also be accompanied by tools to enable data visualization, including mapping and other visualization techniques.

### **Conclusion**

NFHA commends the Biden-Harris administration for its efforts to advance racial equity and its recognition of the important role that data plays in those efforts. We appreciate the opportunity to respond to this RFI and would be happy to answer any questions or discuss our recommendations

further. For additional information, please contact Debby Goldberg (DGoldberg@nationalfairhousing.org), Maureen Yap (MYap@nationalfairhousing.org), or Dr. Michael Akinwumi (MAkinwumi@nationalfairhousing.org).