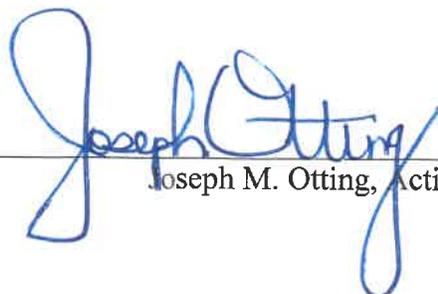


# FEDERAL HOUSING FINANCE AGENCY

## Policy on Communications with Outside Parties in Connection with FHFA Rulemakings



Approved: \_\_\_\_\_

  
Joseph M. Otting, Acting Director

Date: \_\_\_\_\_

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Public

## **FHFA Policy on Communications with Outside Parties in Connection with FHFA Rulemakings**

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## I. Policy

This document sets forth the Policy of the Federal Housing Finance Agency (FHFA or Agency) governing the manner in which written and oral communications made to FHFA personnel by persons or organizations outside FHFA, including the entities regulated by FHFA, are to be managed in connection with FHFA rulemaking proceedings conducted in accordance with section 553 of the Administrative Procedure Act (5 USC 553). The purpose of this Policy is to provide for open development of FHFA's regulations and to encourage public, open, and transparent participation in the rulemaking process absent any legal limitations.

## II. Scope

The Policy covers written and oral communications from outside parties that provide data, information, issues, or positions to FHFA that are directed to the merits or outcome of an FHFA rulemaking proceeding.<sup>1</sup>

The Policy *does not* cover the following:

- (i) Statements by outside parties made in a public meeting, hearing, conference, or similar event, or public medium such as a newspaper, magazine, or social media;
- (ii) Inquiries from outside parties to FHFA limited to the status or timing, or compliance with APA requirements, of an FHFA rulemaking;
- (iii) Communications from outside parties that occur as part of FHFA's regular supervisory, monitoring, research, conservatorship, or other statutory responsibilities, where such communications are only incidentally relevant to, and not intended to influence the merits or outcome of, an FHFA rulemaking;
- (iv) Communications from outside parties that are part of FHFA's contracting process (including meetings with outside parties for the purpose of conducting market research, and exchanges or negotiations with vendors);
- (v) Communications with outside parties to FHFA in connection with a policy matter that is not being considered for, or as part of, an FHFA rulemaking; or
- (vi) Communications from federal or State government representatives, Members of Congress, or congressional staff to FHFA.

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<sup>1</sup> These communications are referred to as "ex parte communications."

### III. Definitions

For purposes of this Policy, the following definitions apply:

ANPR means Advance Notice of Proposed Rulemaking.

APA means the Administrative Procedure Act (5 USC 553).

FHFA personnel means any employee, detailee, or contractor personnel of FHFA who is, or may reasonably be expected to be, involved in developing an FHFA rulemaking.<sup>2</sup>

FOIA means the Freedom of Information Act (5 USC 552).

IFR means Interim Final Rule.

Meeting means a face-to-face discussion, telephone call or conference, videoconference, FHFA-initiated webinar, or FHFA-initiated roundtable, whether in an individual or a group setting.

NPR means Notice of Proposed Rulemaking.

OGC means FHFA's Office of General Counsel.

Outside party means a regulated entity, or other person or organization outside FHFA.

Regulated entity means Fannie Mae, Freddie Mac, a Federal Home Loan Bank, or, for purposes of this Policy, the Federal Home Loan Bank System's Office of Finance.

### IV. Procedures

FHFA personnel may contact outside parties when data or information would be helpful in developing an FHFA regulation. FHFA personnel are also receptive to written and oral communications from outside parties affected by or interested in an FHFA rulemaking. However, nothing said by FHFA personnel during meetings with outside parties on an FHFA rulemaking shall be construed as binding on, or as a final decision by, the FHFA Director or other FHFA personnel.

FHFA's Policy with respect to submission and public disclosure of written and oral communications from outside parties that are directed to the merits or outcome of an FHFA rulemaking proceeding is detailed below.

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<sup>2</sup> FHFA contractor personnel may be involved in a non-policymaking role, such as project management, in connection with an FHFA rulemaking.

## A. **Prior to Issuance of a Request for Public Comment**

This section applies to communications from outside parties on a matter that is being considered for a future FHFA rulemaking that are received by FHFA personnel (1) before issuance of an ANPR, or (2) before issuance of an NPR or IFR where no ANPR has been issued.

### 1. Written Communications

#### a. Submissions

An outside party that wishes to submit a written communication to FHFA may submit the communication to RegComments@fhfa.gov or by contacting individual FHFA personnel.

#### b. Public Disclosure

A written communication from an outside party received prior to issuance of an FHFA rulemaking, or shown or given to FHFA personnel at a meeting, will generally not be disclosed to the public, except that it may be releasable under FOIA. If FHFA subsequently issues an NPR or IFR with respect to the matter, the written communication may be summarized in the NPR or IFR document if necessary in the Agency's determination to provide a complete statement of the basis of the NPR or IFR. The outside party is encouraged to submit a public comment letter on the NPR or IFR for inclusion in the public rulemaking docket, as provided under Section B. below.

### 2. Oral Communications

#### a. Meetings

An outside party that wishes to discuss a matter with FHFA personnel that is being considered for a future FHFA rulemaking may contact FHFA to request a meeting. FHFA will determine in its discretion whether to hold the meeting with the outside party.

#### b. Public Disclosure

Discussions in a meeting with FHFA personnel on a matter that is being considered for a future FHFA rulemaking will generally not be disclosed to the public, except that written records relating to them, if any, may be releasable under FOIA. If FHFA subsequently issues an NPR or IFR with respect to the matter, the discussions may be summarized in the NPR or IFR document if necessary in the Agency's determination to provide a complete statement of the basis of the NPR or IFR. The outside party is encouraged to submit a public comment letter on the NPR or IFR for inclusion in the

public rulemaking docket, as provided under Section B. below. The meeting does not substitute for submitting a public comment letter.

## **B. During the Public Comment Period**

This section applies to communications received by FHFA from outside parties during the public comment period on an ANPR, NPR, or IFR.

### 1. Written Communications

#### a. Submissions

The primary means for an outside party to communicate its views to FHFA during the public comment period should be through submission of a public comment letter to FHFA pursuant to the instructions set forth in the ANPR, NPR, or IFR document.

#### b. Public Disclosure

A written communication from an outside party received by FHFA during the public comment period in the form of a public comment letter, or shown or given to FHFA personnel at a meeting, will be timely filed by FHFA in the public rulemaking docket.

### 2. Oral Communications

#### a. Meetings

FHFA may initiate meetings in its discretion with outside parties during the public comment period to discuss the ANPR, NPR or IFR. An outside party that wishes to discuss the ANPR, NPR, or IFR with FHFA personnel during the public comment period may contact FHFA to request a meeting. A request for a meeting should not substitute for submission of a public comment letter by the outside party. FHFA will determine in its discretion whether to hold a meeting with the outside party.

#### b. Public Disclosure

For meetings between FHFA personnel and outside parties during the public comment period on the ANPR, NPR or IFR, FHFA personnel will prepare a summary of the meeting discussions in a memorandum, or have prepared such other record of the meeting discussions, as determined by FHFA. The summary memorandum or other meeting record will be timely filed by FHFA in the public rulemaking docket. The summary memorandum or other meeting record will contain the names of all persons who attended or otherwise participated in the meeting,<sup>3</sup> the organizations

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<sup>3</sup> An exception would be where outside parties are able to join an FHFA-initiated webinar without identifying themselves.

represented by such persons as applicable, the date and place of the meeting, and a summary of data, information, and positions and issues presented.

## **C. After the Close of the Public Comment Period**

This section applies to communications received by FHFA from outside parties after the close of the public comment period (1) on an ANPR and before issuance of an NPR or IFR, or (2) on an NPR or IFR and before issuance of a Final Rule.

### **1. Written Communications**

FHFA will determine, in accordance with APA requirements, whether to file in the public rulemaking docket a public comment letter, or a written communication shown or given by an outside party to FHFA personnel at a meeting, on the ANPR, NPR, or IFR that is received after the close of the public comment period.

### **2. Oral Communications**

#### **a. Meetings**

FHFA may initiate meetings in its discretion with outside parties after the close of the public comment period to discuss the ANPR, NPR, or IFR. An outside party that wishes to discuss the ANPR, NPR, or IFR with FHFA personnel after the close of the public comment period may contact FHFA to request a meeting. FHFA will determine in its discretion whether to hold a meeting with the outside party.

#### **b. Public Disclosure**

For meetings between FHFA personnel and outside parties on the ANPR, NPR, or IFR after the close of the public comment period, FHFA personnel will prepare a summary of the meeting discussions in a memorandum, or have prepared such other record of the meeting discussions, as determined by FHFA. The summary memorandum or other meeting record will be timely filed by FHFA in the public rulemaking docket. The summary memorandum or other meeting record will contain the names of all persons who attended or otherwise participated in the meeting,<sup>4</sup> the organizations represented by such persons as applicable, the date and place of the meeting, and a summary of data, information and positions and issues presented.

## **D. Exemption for Confidential or Proprietary Data or Information**

If an outside party submits a written communication to FHFA in connection with an FHFA rulemaking during any of the periods described above that requests that the document or any portion thereof be withheld from the public rulemaking docket on the basis that it contains trade secrets, or financial, confidential or proprietary data or

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<sup>4</sup> See footnote 3.

information, the outside party shall include with its submission a request for confidential or proprietary treatment as applicable, explaining why confidential or proprietary treatment is requested and why such information would be properly withheld from disclosure under FOIA or other applicable laws. The outside party shall submit an un-redacted copy of the document with the applicable portion prominently marked as “Confidential” or “Proprietary.” The outside party shall also submit a copy of the document prominently marked “Public,” with the applicable portion redacted. OGC will review the submitted documents and make a timely determination on the request for confidential or proprietary treatment. FHFA will communicate the Agency’s determination to the outside party.

## **E. Exceptions to Public Disclosure**

1. The public disclosure requirements in Sections B. and C. above shall not apply to written or oral communications made by any outside parties to OGC that concern judicial review of a matter that has been decided by FHFA.
2. FHFA may properly withhold information and data submitted by outside parties to FHFA that are exempt from disclosure under FOIA or other applicable laws.

## **V. Exceptions to Policy Provisions**

FHFA retains the discretion to make exceptions to provisions in this Policy on a case-by-case basis, taking into account considerations of fairness, the public interest, or other reasons.

## **VI. Records Retention**

Records created to implement this Policy will be maintained in accordance with FHFA's Comprehensive Records Schedule and the National Archives and Records Administration's General Records Schedules.