

United States Senate

WASHINGTON, DC 20510

February 5, 2024

The Honorable Sandra Thompson
Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, D.C. 20219

Director Thompson,

We are writing to express our concerns about a number of pilot programs within the Federal Home Loan Bank System. These programs impose racially discriminatory policies, lack proper oversight, and deviate significantly from the statutory mandates of the Federal Housing Finance Agency (FHFA) and Federal Home Loan Banks (FHLBanks). In addition to requesting information about these concerning activities, we urge the FHFA and its regulated entities to refrain from advancing politically contentious social agendas, and to refocus on their mission of supporting the U.S. housing system.

Though the FHLBanks concede their primary role is to provide liquidity to their member institutions and secondarily support affordable housing as required by law,¹ a number of FHLBanks have strayed from this mission and implemented policies that overtly discriminate on the basis of race. For example, FHLBank Atlanta established a pilot program funding multifamily rental housing projects that evaluates grant applicants on the basis of their race or ability to provide housing to families on the basis of race.² Similarly, FHLBank Boston and FHLBank Indianapolis have established pilot programs that provide tens of thousands of dollars for down payment assistance exclusively to homebuyers who belong to certain racial groups;³ FHLB Boston observes that its pilot program is “targeted specifically” for minority households and FHLBank Indianapolis expressly notes that its pilot program “is only open to minorities.”⁴ Homebuyers who do not self-certify as “American Indian or Alaska Native,” “Asian,” “Black or

¹ FHLBanks, *What We Do: Our Mission*, <https://fhlbanks.com/mission/>.

² FHLBank Atlanta, Multifamily Housing Bridge Fund, <https://corp.fhlbatl.com/files/documents/multifamily-bridge-fund-program.pdf> (Nov. 3, 2023). Within this pilot program’s scoring system, the most heavily weighted factor for evaluation is “Diversity, Equity & Inclusion (DEI).”

³ FHLBank Boston, Lift Up Homeownership, <https://www.fhlbboston.com/fhlbank-boston/lift-up-homeownership#/>; FHLBank Indianapolis, HomeBoost Minority Down Payment Assistance Program, <https://www.fhlbi.com/services/affordable-housing/homeownership-initiatives/homeboost-minority-downpayment-assistance-program/homeboost-minority-down-payment-assistance/>.

⁴ FHLBank Boston, *Results Digital Magazine*, https://info.fhlbboston.com/Results_Issue14_CommunityNews.html (June 2023); FHLBank Indianapolis, HomeBoost Minority Down Payment Assistance Program, Minority Self-Certification Form, https://www.fhlbi.com/webres/File/products-services/Affordable%20Housing/HomeBoost/Minority_Self_Certification_Form.pdf.

African American,” “Hispanic or Latino,” or “Native Hawaiian or Other Pacific Islander” are ineligible to receive funding.⁵

These politically contentious DEI programs are purposely designed to exclude certain Americans on the basis of race and undermine the FHLBanks’ stated commitment to inclusive community development. If the FHLBanks are genuinely committed to their mission of “opening doors for... more vibrant communities across the nation,” they must do so in a manner that is inclusive of all Americans, regardless of their race.⁶ An institutional commitment to inclusion is only meaningful if it ensures equal treatment for every American.

These pilot programs are not only discriminatory and unfair, but are contrary to the FHLBanks’ secondary mission of supporting affordable housing and appear to circumvent existing statutory requirements for affordable housing. The Federal Home Loan Bank Act mandates the FHLBanks to establish Affordable Housing Programs (AHP) specifically for families with low- and moderate-income (LMI), defined as those earning 80 percent or less of the area’s median income.⁷ However, FHLBank Boston and FHLBank Indianapolis pilot programs extend assistance to households earning up to 120 percent of the area median income—a significant deviation from the ceiling prescribed by Congress. In certain counties, a three-person household earning over \$100,000 could qualify for aid under the FHLBank Indianapolis program.⁸ Pilot programs may not be subject to AHP requirements, but it is critically important that they do not serve as a loophole to ignore the intended recipients of housing assistance under law. The FHFA has a responsibility to ensure that all pilot programs at the FHLBanks comply with existing statutory and regulatory requirements.

The existence of these concerning pilot programs at the FHLBanks also highlights potential gaps in FHFA’s oversight. While the FHFA has implemented a final rule to enhance the supervision of pilot programs at Fannie and Freddie Mac, equivalent measures have not been applied to the FHLBanks.⁹ Although the agency did issue an advisory bulletin on November 9, 2023, instructing the FHLBanks to establish prudential and operational frameworks for their pilot programs, the bulletin also states that “[a]n FHLBank need not await FHFA approval or non-objection before offering the pilot program or voluntary program.”¹⁰ Permitting programs to

⁵ FHLBank Boston, Lift Up Grant Disclosure Homebuyer Self-Certification, <https://www.hagerty.senate.gov/wp-content/uploads/2024/01/Lift-Up-Grant-Disclosure-Homebuyer-Self-Certification.pdf>; FHLBank Indianapolis, HomeBoost Minority Down Payment Assistance Program, Minority Self-Certification Form, https://www.fhlbi.com/webres/File/products-services/Affordable%20Housing/HomeBoost/Minority_Self_Certification_Form.pdf.

⁶ FHLBanks, *Opening Doors*, <https://fhlbanks.com/OpeningDoors/>.

⁷ 12 U.S.C. § 1430(j) - Affordable housing program.

⁸ FHLBank Indianapolis, “HomeBoost AMI Table,” <https://www.fhlbi.com/services/affordable-housing/homeownership-initiatives/homeboost-minority-downpayment-assistance-program/homeboost-minority-down-payment-assistance/>.

⁹ 88 Fed. Reg. 11779.

¹⁰ Fed. Hous. Fin. Agency, Advisory Bulletin 2023-06: FHLBank Framework for Pilot and Voluntary Programs https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/Pages/AB_2023-06_FHLBank-Framework-for-Pilot-and-Voluntary-Programs.aspx (Nov. 9, 2023).

advance without approval raises questions about whether and how the FHFA actually intends to conduct meaningful oversight and ensure these programs align with statutory requirements.

In response to other Biden Administration regulatory excesses, the Supreme Court has consistently ruled that agencies may not address major policy questions without clear authorization from Congress.¹¹ In the case of the FHFA and its regulated entities, it is clear that Congress has not delegated the power to carry out politically contentious and racially discriminatory programs that deviate so significantly from core statutory mandates. Accordingly, we urge the FHFA and its regulated entities to thoroughly evaluate current programs and policies and ensure that all activities align with congressional intent and are authorized by law.

To ensure that the FHFA and its regulated entities refocus on fulfilling their core missions in an apolitical and nondiscriminatory manner, we request the following information by no later than February 23, 2024:

- All records, memoranda, and emails created or generated between January 1, 2021, and the present that describe or refer to the use of racial identity in the evaluation of applications to FHLBank Atlanta’s “Multifamily Housing Bridge Fund.”
- All records, memoranda, and emails created or generated between January 1, 2021, and the present that describe or refer to the use of racial identity in the evaluation of applications to FHLBank Boston’s “Lift Up Homeownership” pilot program.
- All records, memoranda, and emails created or generated between January 1, 2021, and the present that describe or refer to the use of racial identity in the evaluation of applications to FHLBank Indianapolis’ “HomeBoost Minority Down Payment Assistance Program.”
- All records, memoranda, and emails created or generated between January 1, 2021, and the present that describe or refer to the internal approval of the aforementioned pilot programs at their respective FHLBanks.

Additionally, please provide answers to the following questions by no later than February 23, 2024.

- What statute authorizes FHLBank pilot and voluntary programs to exclude certain program applicants on the basis of their race?
- Have FHLBank Atlanta’s “Multifamily Housing Bridge Fund,” FHLBank Boston’s “Lift Up Homeownership” pilot program,” and FHLBank Indianapolis’ “HomeBoost Minority Down Payment Assistance Program” been approved by the FHFA? Please describe all supervisory and regulatory measures the FHFA has taken to oversee these programs.

¹¹ Biden v. Nebraska, No. 22-506, slip op. at 25 (U.S. June 30, 2023); *W. Virginia v. Env’t Prot. Agency*, 142 S. Ct. 2587, 2609 (2022); *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab., Occupational Safety & Health Admin.*, 142 S. Ct. 661, 665 (2022); *Alabama Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 41 S. Ct. 2485, 2489 (2021).

- What oversight, if any, does the FHFA presently exercise over the implementation of pilot and voluntary programs?
- How does FHFA determine if a pilot or voluntary program is subject to the requirements of the New Business Activity Regulation?
- How does the FHFA determine if a pilot or voluntary program presents material risks?
- How many FHLBank pilot or voluntary programs have been evaluated to determine if they present material risks in the last five years? Of these programs, how many were deemed to present material risks?

Sincerely,



Bill Hagerty
United States Senator



Thom Tillis
United States Senator



Katie Boyd Britt
United States Senator



JD Vance
United States Senator

cc: Mr. Kirk Malber, President & CEO, FHLBank Atlanta

Mr. Tim Barrett, President & CEO, FHLBank Boston

Mrs. Cindy Konich, President & CEO, FHLBank Indianapolis