

Federal Housing Finance Agency  
Office of Inspector General



# **Inspection: FHFA’s Inclusion of a Mandatory Anti-Gag Provision in Its Non-Disclosure Materials During the Review Period**

## ..... EXECUTIVE SUMMARY .....

### PURPOSE

The Whistleblower Protection Enhancement Act of 2012 (WPEA) requires federal agency non-disclosure policies, forms, and agreements to include an “anti-gag” provision informing employees that such non-disclosure documents do not limit their rights to report wrongdoing. We conducted this inspection to assess whether the Federal Housing Finance Agency (FHFA or Agency) complied with the WPEA’s requirement over a two-year period.

### RESULTS

Our inspection determined that FHFA complied with the WPEA’s anti-gag requirement for the period January 1, 2022, through December 31, 2023, summarized as follows:

- FHFA’s non-disclosure policies included the anti-gag provision.
- FHFA’s non-disclosure form included the anti-gag provision.
- FHFA officials reported that during the review period, they had not executed, finalized, or entered into any non-disclosure agreements, nor any other agreements containing non-disclosure provisions.

We do not make any recommendations.

This report was prepared by by Karen Van Horn, Senior Investigative Counsel, and Wesley Phillips, Senior Policy Advisor. We appreciate the cooperation of FHFA staff, as well as the assistance of all those who contributed to the preparation of this report. This report has been distributed to Congress, the Office of Management and Budget, and others, and will be posted on our website, [www.fhfa.ig.gov](http://www.fhfa.ig.gov), and at [www.oversight.gov](http://www.oversight.gov).

Brian W. Baker  
Deputy Inspector General  
Office of Compliance

**TABLE OF CONTENTS** .....

EXECUTIVE SUMMARY .....2

ABBREVIATIONS .....4

BACKGROUND .....5

    Federal Law Protects Whistleblowers .....5

OBJECTIVE(S) AND SCOPE .....7

RESULTS .....7

    FHFA Included the Anti-Gag Provision in Its Policies Containing Non-Disclosure Requirements .....7

    FHFA Included the Anti-Gag Provision in a Form Containing Non-Disclosure Requirements .....8

    FHFA Did Not Execute Any Non-Disclosure Agreements.....8

CONCLUSIONS.....8

APPENDIX I: METHODOLOGY .....9

## ABBREVIATIONS .....

|                |  |
|----------------|--|
| CUI            | Controlled Unclassified Information                  |
| FHLBank System | Federal Home Loan Bank System                        |
| Employee       | Federal employee or applicant for federal employment |
| Enterprises    | Fannie Mae and Freddie Mac, collectively             |
| FHFA or Agency | Federal Housing Finance Agency                       |
| OIG            | FHFA Office of Inspector General                     |
| Review Period  | January 1, 2022, through December 31, 2023           |
| WPA            | Whistleblower Protection Act of 1989                 |
| WPEA           | Whistleblower Protection Enhancement Act of 2012     |

## BACKGROUND.....

FHFA is both the regulator and conservator of Fannie Mae, Freddie Mac (collectively, the Enterprises), and their affiliate, Common Securitization Solutions, LLC. The Agency’s regulatory mission includes supervising the Enterprises’ safety and soundness so that they serve as reliable sources of liquidity and funding for housing finance and community investment.

FHFA also regulates and supervises the Federal Home Loan Bank System (FHLBank System), which consists of 11 regional FHLBanks and their fiscal agent, the Office of Finance. The FHLBank System’s mission is to provide reliable liquidity to member institutions to support housing finance and community investment. FHFA is responsible for ensuring that the FHLBank System operates in a safe and sound manner, remains adequately capitalized and able to raise funds in the capital markets, and achieves its housing finance and community investment mission.

The Enterprises, collectively, have over \$7.5 trillion in assets; the FHLBank System, collectively, holds over \$1 trillion in assets. The influence of the Agency and its regulated entities on the U.S. housing market—and the U.S. economy—is significant. Accordingly, it is in the public interest that potential threats to the security of the Agency, the Enterprises, and the FHLBank System—including waste, fraud, and abuse—be identified and addressed.

### Federal Law Protects Whistleblowers

Federal whistleblowers are employees at federal agencies (including but not limited to FHFA) or people who are applicants for such employment<sup>1</sup> who make “protected disclosures”<sup>2</sup> alleging violations of laws or regulations, gross mismanagement or waste of funds, or other deficiencies in Agency operations. Whistleblowers serve the public interest by assisting in the elimination of fraud, waste, and abuse.

In recognition of whistleblowers’ important role, federal laws ensure that employees can disclose wrongdoing without the threat of retaliation. Two such laws are the Whistleblower Protection Act of 1989 (WPA)<sup>3</sup> and the WPEA.

---

<sup>1</sup> For ease of reference, we refer to federal employees and applicants for federal employment collectively as “employee(s).”

<sup>2</sup> A disclosure is protected under the Whistleblower Protection Act of 1989 if the employee communicates information the employee reasonably believes to be evidence of: (1) a violation of any law, rule, or regulation; (2) gross mismanagement; (3) a gross waste of funds; (4) an abuse of authority; or (5) a substantial and specific danger to public health or safety.

<sup>3</sup> 5 U.S.C. § 2302(b)(8), Pub.L. 101-12, as amended.

The WPA prohibits agencies from retaliating against whistleblowers by taking or not taking a personnel action<sup>4</sup> against an employee (or threatening to take or not take such an action) for any protected disclosure of information.<sup>5</sup> The WPEA strengthened the WPA’s whistleblower protections by requiring all federal agency non-disclosure policies, forms, and agreements<sup>6</sup> to include the following statement, also known as the “anti-gag provision,” to notify employees of their right to report wrongdoing:<sup>7</sup>

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive Order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling.

This anti-gag provision prohibits an Agency from using a non-disclosure policy, form, or agreement to prevent a potential whistleblower from bringing instances of waste, fraud, or abuse to light.

---

<sup>4</sup> For the WPA’s purposes, a “personnel action” means: (i) an appointment; (ii) a promotion; (iii) an action under chapter 75 of Title 5, U.S. Code, or other disciplinary or corrective action; (iv) a detail, transfer, or reassignment; (v) a reinstatement; (vi) a restoration; (vii) a reemployment; (viii) a performance evaluation; (ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph; (x) a decision to order psychiatric testing or examination; (xi) the implementation or enforcement of any non-disclosure policy, form, or agreement; and (xii) any other significant change in duties, responsibilities, or working conditions.

<sup>5</sup> In general, a federal employee may make a protected disclosure unless the information is classified or specifically prohibited by law from release. Options for making a protected disclosure include: informing a supervisor or someone higher up in management; submitting a complaint to the Office of Inspector General for that employee’s agency by filing a complaint with OIG’s Hotline; or filing a complaint with the U.S. Office of Special Counsel.

<sup>6</sup> The WPEA does not define the terms “policies,” “forms,” or “agreements.” For this inspection’s purposes, we understand these terms in their colloquial sense, particularly as documents that might be construed to limit an employee’s ability to make protected disclosures.

<sup>7</sup> 5 U.S.C. § 2302(b)(13).

## OBJECTIVE(S) AND SCOPE .....

OIG has paid close attention to FHFA’s handling of whistleblower protections, issuing multiple prior reports on the subject.<sup>8</sup> We initiated this inspection as a follow-on to that prior work, to assess whether FHFA included the anti-gag provision as required by law in its non-disclosure policies, forms, agreements, and related documents. To do so, we requested that FHFA provide us with all such materials in effect from January 1, 2022, through December 31, 2023 (review period), and interviewed Agency officials as necessary.

## RESULTS .....

### FHFA Included the Anti-Gag Provision in Its Policies Containing Non-Disclosure Requirements

At our request, FHFA produced two Agency policies that were in effect during the review period, each of which contained the required anti-gag provision. FHFA advised that these were the only two Agency policies in effect during the review period that contained non-disclosure requirements.

- Controlled Unclassified Information Policy

The first such policy in effect during our review period was FHFA’s policy pertaining to controlled unclassified information (CUI), which establishes principles governing the appropriate designation, management, and protection of all information created by or in the Agency’s possession.<sup>9</sup> The CUI Policy states that reasonable precautions must be taken to guard against unauthorized disclosure of controlled unclassified information (CUI)<sup>10</sup> by properly securing systems, controlling dissemination, and

---

<sup>8</sup> See *Summary of Administrative Inquiry: The Office of Inspector General’s Investigation into Whistleblower Reprisal Allegations Made by a Former Employee of a Contractor* ([OIG-2020-006](#)) (September 30, 2020); *FHFA Did Not Follow its Interim Directive on a Requirement to Use a FAR Clause Intended to Protect Whistleblower Rights of Contractor Employees, But Has Since Taken Corrective Action* ([AUD-2021-015](#)) (September 30, 2021); and *FHFA Incorporated the FAR’s Whistleblower Protection Language for Contractor Employees in Selected Open Market Solicitations and Awards* ([COM-2024-003](#)) (February 8, 2024).

<sup>9</sup> The prior version of the CUI policy was approved on April 21, 2021. The most recent version of the CUI policy was approved on June 2, 2023, and remains in effect. Since our review period covered both versions to some extent, we reviewed both.

<sup>10</sup> The National Archives and Records Administration has established an online repository, the CUI Registry, which identifies and describes all the categories of CUI. The CUI Registry is available at [www.archives.gov/cui/registry/category-list](http://www.archives.gov/cui/registry/category-list).

applying CUI markings to documents. The CUI Policy includes the anti-gag provision verbatim as required by the WPEA.<sup>11</sup>

- Bank Secrecy Act Policy

The second Agency policy in effect during our review period containing non-disclosure language sets forth principles governing the proper communication, management, and protection of Bank Secrecy Act information in the Agency’s possession and restricts both access to and use of that information. As with its CUI Policy, the Agency expressly included the anti-gag provision in the Bank Secrecy Act Policy.

### **FHFA Included the Anti-Gag Provision in a Form Containing Non-Disclosure Requirements**

The Agency also stated that it had one form in effect during the review period that contained non-disclosure language. This form describes the Agency’s rules for accessing and using FHFA information systems and the information contained in those systems, and it contains several prohibitions against users disclosing FHFA’s CUI or other non-public information. The form includes the required anti-gag provision verbatim. The Agency stated that this form was the only one in effect during the review period that contained non-disclosure language.

### **FHFA Did Not Execute Any Non-Disclosure Agreements**

FHFA stated that during the review period, it had not executed, finalized, or entered into any non-disclosure agreements, nor had it executed, finalized, or entered into any other agreements containing non-disclosure provisions.

## **CONCLUSIONS .....**

FHFA’s two policies and one form containing non-disclosure language each included the WPEA’s required anti-gag provision. FHFA did not have any agreements containing non-disclosure provisions during the review period. Accordingly, based on the information provided, we found that the Agency complied with the WPEA’s anti-gag provision requirement during the review period.

---

<sup>11</sup> Both versions of the CUI Policy in effect during the review period included the anti-gag provision as required.



## APPENDIX I: METHODOLOGY.....

We initiated this inspection to assess whether FHFA complied with the WPEA and included the required anti-gag provision in policies, forms, and agreements containing non-disclosure language during the review period.

To conduct our work, we requested and reviewed Agency materials containing non-disclosure language. We also interviewed FHFA officials.

We conducted the fieldwork for this inspection from March 2024 through April 2024 under the authority of the Inspector General Act of 1978, as amended, and in accordance with the *Quality Standards for Inspection and Evaluation* (December 2020), which were promulgated by the Council of the Inspectors General on Integrity and Efficiency.

## Federal Housing Finance Agency Office of Inspector General

To report potential fraud, waste, abuse, mismanagement, or any other kind of criminal or noncriminal misconduct relative to FHFA's programs or operations:

- Call: 1-800-793-7724
- Fax: 202-318-0358
- Visit: [www.fhfaig.gov/ReportFraud](http://www.fhfaig.gov/ReportFraud)
- Write: FHFA Office of Inspector General  
Attn: Office of Investigations – Hotline  
400 Seventh Street SW  
Washington, DC 20219