NATIONAL ASSOCIATION OF REALTORS®

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RICHARD F. "DICK" GAYLORD
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President

November 20, 2007

The Honorable James B. Lockhart III
Director
Office of Federal Housing Enterprise Oversight
1700 G Street, NW
Washington, DC 20552

[transmitted by electronically to RegComments@OFHEO.gov]

Dear Director Lockhart:

On behalf of more than 1.4 million members of the National Association of REALTORS® (NAR), I am pleased to provide comments to the Office of Federal Housing Enterprise Oversight (OFHEO) on the Revised Draft Examination Guidance related to conforming loan limit (CLL) calculations, published in the Federal Register on October 22, 2007.[1]

The National Association of REALTORS®, "The Voice for Real Estate," is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,500 local associations or boards, and 54 state and territory associations of REALTORS®. The proposed Guidance will have an impact on the availability of financing for homeownership and, therefore, is of vital concern to REALTORS®.

With respect to the proposed Guidance:

- NAR continues to question whether OFHEO has statutory authority to require reductions in CLLs that cap the dollar amount of mortgages that Fannie Mae and Freddie Mac may purchase.
- NAR continues to believe that reducing the conforming loan limit is not good public policy because it intensifies downturns in housing markets by reducing the flow of affordable credit and raises other concerns. Your decision to raise the trigger threshold from 1 percent to 3 percent does, however, mitigate this concern.

[1] 72 Fed. Reg. 59545

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- If, notwithstanding our statutory authority and public policy concerns, you decide to issue final guidance based largely on the proposed Guidance, NAR continues to support key features of the guidance, including the 3 percent threshold, the deferral of reductions for at least one year, and grandfathering mortgages approved under higher CLLs.
- We appreciate your decision to publish the guidelines in the Federal Register for public comment.

Statutory Authority to Increase, Not Decrease, CLLs

The Fannie Mae and Freddie Mac charters provide for annual CLL adjustments by "adding" an amount that reflects the annual "increase" in a national survey conducted by the Federal Housing Finance Board.[2] The statutory provisions make clear that Congress only authorized adjustments to increase CLLs, and possible reasons for this are suggested in the following section of this letter discussing public policy considerations for not reducing the limits.

The legislative history confirms congressional intent. Congress added the current provision in the Housing and Community Development Act of 1980.[3] The Senate Report states that the Senate bill, S. 2719, "provides for an increase in these maximum limitations."[4] The Conference Report confirms that the annual adjustment is "made by adding to the maximum limitation (as it may have been previously adjusted) a percentage" based on the national survey and notes that the conference report contained the Senate bill provision.[5]

Section 133 of H.R. 1427, the "Federal Housing Finance Reform Act of 2007," as passed by the House of Representatives, would revise the statute to authorize adjusting CLLs, up or down. The House report for H.R. 1427 makes explicit that current law authorizes only increasing CLLs and that the bill would authorize "for the first time" decreasing CLLs:

> This section updates statutory language from 1981 that set conforming loan limits for Fannie Mae and Freddie Mac, and provided for adjustments upward through an index/housing survey. While the conforming loan limit has been raised every year since 1981, this section inserts 2007 conforming loan limits that were set by the current regulator at $417,000 for a one-unit single family residence . . . . Allows for these limits to be adjusted annually, starting on January 1 after the effective date of this legislation, to reflect increases and, for the first time, decreases in housing prices, and a new method for establishing annual adjustments authorized in this section.[6] [emphasis added]

When Congress makes its intent clear with specific statutory language confirmed by legislative history leading to enactment, and even by subsequent history, we do not think a regulatory agency has authority to fill a "gap" in the law. There is no gap.

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[2] See 12 U.S.C. 1717(b)(2) and 1454(a)(2).
[3] P.L. 96-399.
[4] S. Rep. No. 96-736, at 38 (1980).
[5] H.R. Conf. Rep. No. 96-1420, at 26 (1980).
[6] H.R. Rep. No. 110-142, at 132 (2007)

Public Policy Concerns

Aside from the lack of statutory authority to reduce CLLs, NAR believes that you should revise the Guidance to prevent reducing CLLs for the following public policy reasons.

- When the FHFB survey data shows a national decline in single family home prices, it is the worst possible time to reduce the amount of mortgage credit. A significant decrease in CLLs would exacerbate problems in the housing markets around the country, especially in high cost areas such as California and the northeast. The ripple effect of a downturn in housing on the rest of the economy is well understood. While the one-year delay and three percentage point threshold, before a decrease would apply, will moderate or even avoid a reduction, circumstances could still arise where the Guidance someday could require reducing CLLs, which we believe would be a significant policy mistake.

- Another reason not to reduce CLLs even in a declining market relates to the need for families with abusive, unaffordable subprime loans to refinance into fair and affordable loans. Because home prices have moderated or declined in many markets, families with problematic loans and little or no equity are finding it difficult or impossible to refinance. For many families with loans at or near the current CLL, the impact of reducing CLLs will be to make refinancing impossible. This is not the time to reduce options for families who have been victims of predatory or abusive lending practices. The Center for Responsible Lending estimates that more than 2.2 million families who have received subprime loans in recent years already have lost or will lose their homes as their interest rates re-set. Reducing CLLs would be one more strike against them.

- The Federal Housing Administration (FHA) mortgage insurance program and the Veterans Administration (VA) loan guarantee program limits are both tied to the CLLs. HUD has made administrative changes to modernize and streamline the FHA program, and NAR supports HUD's proposals for statutory changes to make further improvements. One goal is to make FHA a more practical alternative for families with abusive subprime loans who need to find a reasonable alternative. Reducing FHA and VA limits will counter these efforts to provide more affordable choices for low- and moderate-income families.

Comments on Guidance

If, notwithstanding our understanding of the statute and the public policy concerns discussed above, you determine to issue final Guidance closely based on the proposed Guidance, NAR offers the following comments:

NAR welcomes several features of the proposal. Using a threshold that keeps CLLs level until reductions in home prices, over time, aggregate at least 3 percent will minimize administrative uncertainty and inadvertent approval of mortgages that exceed the reduced CLLs. Even more important is the proposal to delay any decrease for at least one year, to avoid

confusion with pending applications in the pipeline. In addition, the grandfathering of mortgages originated at higher CLLs is crucial to avoid chaotic and uncertain results. We do think, however, that it makes more sense to grandfather mortgages that have received a firm commitment to provide certainty for homebuyers and avoid situations where closings cannot proceed.

Thank you for the opportunity to provide comments on the proposed Guidance. Please contact Jeff Lischer, Manager, Financial Services (202.383.1117; jlischer@realtors.org) if you have any questions about our comments.

Sincerely yours,

Richard F. "Dick" Gaylord, CIPS, CRB, CRS, GRI
2008 President, National Associations of REALTORS®