

# OFHEO

Director's Advisory

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## Policy Guidance

**Issuance Date:** April 2, 2001

**Doc. #:** PG-01-001

**Subject:** Regulatory Review

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**To:** Chief Executive Officers of Fannie Mae and Freddie Mac  
All OFHEO Personnel

### **Background**

The Federal Housing Enterprises Safety and Soundness Act of 1992, Title XIII of Pub. L. No. 102-550 (the Act), empowers the Director of OFHEO to undertake rulemaking and such other actions as the Director determines to be appropriate to oversee the activities and operations of Freddie Mac and Fannie Mae (the Enterprises). In the course of exercising such authority, the Director promulgates regulations and adopts guidances and supervisory policies.

In this Policy Guidance, OFHEO creates a process for routine review and, where appropriate, revision of its rules and regulations. Such a process aims to provide for planned reviews of the entire regulatory infrastructure and to consider certain criteria that assist in determining whether an inefficiency or unwarranted burden exists. Once a review is completed, the Director will determine what steps may be necessary including the amendment or repeal of existing regulations or guidances. The General Counsel, as OFHEO's Regulatory Policy Officer, is charged with undertaking the regulatory review and reporting to the Director findings and recommendations.

The review process set forth in this Policy Guidance will be conducted by the Office of General Counsel, under the direction of the General Counsel and subject to any additional guidance provided by the Director. The review is to include internal consultation with other OFHEO offices and staff. The review and report of findings and recommendations to the Director are to occur on a timely basis. Results of the internal review will be privileged and confidential.

In his or her discretion, the Director may call for public comment at the time of a review and may limit such comments to a list of specific topics.

Pursuant to this Policy Guidance, at least every five years, or sooner if determined by the Director, OFHEO is to conduct a review of its rules and regulations as they relate to compliance with the laws administered by the agency. The review will

consider whether existing rules have become inefficient or create unwarranted burden and identify possible revisions where such conditions are found.

This Guidance sets forth criteria for review of OFHEO regulations to assist in the process of assessing whether rules or regulations present obsolete, duplicative or otherwise inefficient or burdensome requirements. Additional factors are identified to assist in determining whether an unwarranted burden exists under the enunciated criteria. The criteria and factors set forth herein are intended to provide assistance to the agency in its review, but would not constitute limiting factors to such review. The Director and the General Counsel have discretion to set other criteria and add other factors to aid in conduct of the review.

The Guidance does not provide, either explicitly or implicitly, for a right of action against OFHEO for its review process or determinations made in the course of such review.

### **Regulatory Review Process**

(1) Authority and Scope. Pursuant to the Act, the Director may, among other authorities, promulgate regulations and guidances to carry out OFHEO's statutory duties and responsibilities. Executive Order 12866 calls upon Federal agencies to reduce, where appropriate, regulatory burden or inefficiencies on regulated industries. The purpose of this Policy Guidance is to set forth a procedure for routine, periodic review of OFHEO rules, regulations and guidances in keeping with the intent of federal directives. This Guidance applies to all major OFHEO rules, regulations and guidances promulgated and affecting both agency supervisory processes as well as the Enterprises directly.

Nothing in this Policy Guidance in any way limits the authority of OFHEO otherwise to review and revise existing rules, regulations, orders and written policies or adopt any rules, regulations, orders or policies as deemed to be appropriate by the Director under the Act and other applicable laws.

(2) Process.

(a) Timing and Scope. Not less than every five (5) years, after the effective date of this Policy Guidance, OFHEO expects to complete a review of its rules and regulations, including the written policies, supervisory procedures, and recordkeeping and documentation requirements used to oversee the operations of the Enterprises and to monitor or enforce their compliance with the laws administered by the agency. Such review shall consider whether such rules, regulations and guidances have become inefficient or create unwarranted burdens and shall identify revisions that might address such conditions without in any respect diminishing compliance with or enforcement of laws under OFHEO's jurisdiction or in any respect endangering the safety and soundness of the Enterprises. The Director of OFHEO may set earlier reviews of rules and regulations in his or her discretion and shall determine the scope of the review in his or her discretion.

(b) Role of Office of General Counsel. The Office of General Counsel shall conduct such general or specific review, as delineated by the Director, in consultation with other OFHEO offices and expert agency staff. Such review shall take place in a timely manner and a report of findings and recommendations is to be provided to the Director by the General Counsel as OFHEO's Regulatory Policy Officer. The report shall recommend to the Director whether and what action should be taken in light of the review.

(c) Public Comment. The Director may provide, in his or her discretion, notice to the public of such review and the opportunity for public comment either in general or on a specific list of regulations under review.

(3) Criteria.

(a) Among the considerations that may be used in the review of the existence of regulatory inefficiencies or burden are the following:

(i) legal or regulatory developments, including new laws, executive orders and judicial decisions that have been adopted since the promulgation of a rule or regulation that make such rule or regulation inefficient, obsolete, contrary to controlling legal precedent or unduly burdensome;

(ii) application by an Enterprise for revision of a rule or regulation, because of reasonably discernible regulatory burden or inefficiency;

(iii) marketplace developments, technological evolution and related changes that may have rendered an existing rule or regulation, in whole or in part, inefficient, outmoded or outdated; and

(iv) such other occurrences or developments as determined by the Director or General Counsel to be relevant to a review for inefficiency or unwarranted regulatory burden.

(b) Among other factors that may be considered in reviewing possible inefficiency or unwarranted regulatory burden are the following:

(i) compelling evidence that a consolidation of two or more rules, elimination of a duplicative rule or regulation, or other revision to regulatory requirements would facilitate compliance or supervision;

(ii) a demonstration of a better alternative method to effect a regulatory purpose or requirement supported by compelling evidence of significantly less intrusive means or of a substantially more efficient method of accomplishing the same supervisory purpose; and

(iii) such other factors as determined by the Director to be relevant to determining and evaluating the need for, appropriateness of, and effectiveness of a particular rule or regulation.

(4) No Right of Action. A review conducted pursuant to this Policy Guidance is not a formal or informal rulemaking proceeding under the Administrative Procedure Act and creates no right of action against OFHEO. An agency determination to conduct or not to conduct review of a rule regulation and any determination, finding or recommendation resulting from such review under this Policy Guidance are not final agency actions and are not subject to judicial review.

Dated: \_\_\_\_\_

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Armando Falcon, Jr.  
Director,  
Office of Federal Housing Enterprise Oversight