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OFHEO GUIDELINE 105

Approved by: Mark Kinsey, Acting Director of OFHEO [signed]
Date: 6/10/98

1.0 Purpose:

To establish the Office of Federal Housing Enterprise Oversight (OFHEO) policy for releasing information to non-OFHEO persons or organizations, in response to their requests for information.

2.0 Scope:

This policy is applicable to disclosure of information by OFHEO employees and contractor personnel to non-OFHEO individuals or organizations.

This policy is applicable to all information created or received by OFHEO, including but not limited to, information related to the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) - (collectively, the GSEs).

This policy is not applicable to disclosure of information within OFHEO among employees and contractor personnel.

3.0 Authority:

This OFHEO Guideline is responsive to the Freedom of Information Act (FOIA) (5 U.S.C. § 552), the Privacy Act (5 U.S.C. § 552a), the Trade Secrets Act (18 U.S.C.A. §1905), and the OFHEO proposed regulation entitled "Releasing Information," 12 C.F.R. § 1710.1 (1995). The proposed regulation provides interim guidance until the final regulation is issued, at which time, this OFHEO Guideline will be reviewed and revised, as required.

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4.0 Policy:

OFHEO shall release information in accordance with this OFHEO Guideline, which names those OFHEO positions **authorized** to release information, and which directs OFHEO employees to proactively balance the freedom of information, the right to privacy, and the obligation of careful protection of both proprietary, business-sensitive information and government-sensitive information.

How a request for information is responded to will often limit OFHEO's choices in deciding how to respond to subsequently-received requests. For example, disclosure of data and documents to one individual generally requires disclosure of the same data and documents to other individuals who subsequently submit an identical request. Therefore, *authorized OFHEO employees (see list in Section 5.0)* are strongly encouraged to consult with each other in determining how to respond to requests for nonpublic information.

Nonpublic information created or received in one medium (paper, disk, magnetic tape) when translated into another medium, remains nonpublic information.

If nonpublic information can be disclosed or derived from OFHEO data or documents, then the OFHEO data or documents may be nonpublic information. An example of this could be data and documents, which include data that has been aggregated.

If OFHEO data or documents reproduce nonpublic information or present resulting analyses of nonpublic information, the OFHEO-created data or documents are also nonpublic information, until released by *authorized OFHEO employees*.

In addition to possible civil liability, criminal sanctions may be imposed upon OFHEO employees who make unauthorized disclosure of the type of information covered by the Trade Secrets Act 18 U.S.C. §1905. Contractor personnel are prohibited from disclosing nonpublic information by the

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provisions included in the contract between the contractor and OFHEO.

OFHEO employees shall be discreet in their conversations concerning nonpublic information when in public places (cabs and restaurants), or on cellular telephones, where such conversations may be overheard or intercepted.

The FOIA Officer and FOIA Appeals Officer have statutory time limits of 20 days within which to respond to a request or an appeal. In unusual circumstances, specified in the statute, these periods may be extended with written notice to the requester.

The following types of OFHEO documents have been determined to be public information documents *when and after* they are approved by the Director of OFHEO *and officially released by an authorized OFHEO employee*:

- OFHEO Annual Reports.
- OFHEO House Price Indexes.
- OFHEO News Releases.
- OFHEO Regulations as published in the Federal Register.
- Speeches by OFHEO personnel.
- Testimonies of OFHEO personnel.
- Research publications/presentations.

5.0 Definitions:

Authorized OFHEO employees - Those OFHEO employees authorized to analyze requests for information and respond to these requests. Position titles include:

- The FOIA Officer.
- The FOIA Appeals Officer.
- The Privacy Act Officer.
- The Privacy Act Appeals Officer.
- The Director of Congressional Affairs.
- The Director of Office of Public Affairs.

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Contractor personnel - An individual who is working for OFHEO in accordance with the terms and conditions of a contract.

Employee - An individual who is working at OFHEO and who is a Federal employee. This definition includes detailees.

Incoming and Exit Interviews - Interviews during which the FOIA Officer instructs incoming and departing employees and contractor personnel on, among other things, the roles and responsibilities described in this OFHEO Guideline; describes the types of documents which are public documents; how and when these documents are released to the public; and enjoins them to remember their responsibilities for nondisclosure of nonpublic information. In addition, the designated OGC Attorney advises incoming and departing employees and contractor personnel on, among other things, the legal prohibitions against unauthorized disclosure of nonpublic information.

Information - Data and documents in any media (e.g., paper, film, or electronic).

Legal Sufficiency - Of such a quality that it: is authorized or required by law, will be given legal effect, and/or protects OFHEO's legal interests.

Non-OFHEO Persons or Organizations - any person or organization who is not an OFHEO employee. This definition includes individuals from other agencies or branches of the Federal government, including HUD and Congress.

Nonpublic Information - Any information which has not been determined to be public information and approved for release by OFHEO through its clearance processes. Nonpublic information includes both business-sensitive information and government-sensitive information, as well as information covered by the FOIA, the Privacy Act, and the Trade Secrets Act. Most OFHEO information (data and documents) is nonpublic information.

Public Information - Any information which has been determined to be public information by OFHEO through its document

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clearance processes (see the list of OFHEO public information documents).

Redact - To revise data or documents by editing out or masking information, which is protected from release by statutory or regulatory authority.

Response - The OFHEO correspondence and associated data or documents which are responsive to a request for information. Data and documents may be released in their entirety, released with portions redacted, or withheld in their entirety in accordance with the exemptions stated in the FOIA or the Privacy Act.

System of Records - A group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

6.0 Functional Responsibilities:

6.1 OFHEO employees are responsible for the following:

6.1.1 Signing required nondisclosure oaths. OFHEO employees shall sign the "OFHEO Employee Oath." Key contractor personnel shall sign the "Nondisclosure Oath."

6.1.2 Maintaining the confidentiality of nonpublic information. OFHEO employees shall not disclose or permit disclosure of nonpublic information except as necessary in the performance of their official duties and as authorized by this policy.

This prohibition against disclosing nonpublic information, except as otherwise authorized, includes, but is not limited to:

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- Disclosing nonpublic information regarding OFHEO to the press, to the public, to a member of Congress, or to a GSE.
- Disclosing nonpublic information regarding a GSE to the press, to the public, to a member of Congress, or to another GSE.
- Disclosing nonpublic information regarding a GSE to that GSE's employees or agents, who are not authorized to know the nonpublic information.

6.1.3 Providing *authorized OFHEO employees* prompt and complete access to their information. Upon request, OFHEO employees shall offer *authorized OFHEO employees* (see list in Section 5.0) prompt and complete access to relevant data and documents, in order to facilitate the analyzing of a request for information from an external source.

6.1.4 Referring requests for information to *authorized OFHEO employees*. Unless one is an *authorized OFHEO employee*, OFHEO employees shall refer requests for information to *authorized OFHEO employees* for analyzing, as follows:

- Requests for information from the press. OFHEO employees shall refer written and verbal requests for information from members of the press to the Director of Public Affairs, unless the request is addressed to another *authorized OFHEO employee* such as the FOIA Officer (see list in Section 5.0).
- Requests for information from Congress. OFHEO employees shall refer written and verbal requests for information from Members of Congress, Congressional staff, and

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Congressional Committees to the Director of Congressional Affairs.

- Requests for information from the GSEs. OFHEO employees shall refer written requests for information from a GSE to the FOIA Officer unless the request is addressed to another *authorized OFHEO employee* such as the Privacy Act Officer (see list in *Section 5.0*).
- Verbal requests for information. OFHEO employees shall refer verbal requests for information to the appropriate Office Director.
- Requests for information from the public. OFHEO employees shall refer written requests for information from the public to the Director of Public Affairs, unless the request is addressed to another *authorized OFHEO employee*; and verbal requests for information from the public to the Director of Public Affairs.
- FOIA requests for information. OFHEO employees shall refer FOIA requests to the FOIA Officer.
- FOIA appeals. OFHEO employees shall refer FOIA appeals to the FOIA Appeals Officer.
- Requests for personal information. OFHEO employees shall refer requests for personal information to the Privacy Act Officer. These may be requests for information from OFHEO systems of records covered under the Privacy Act.
- Privacy Act appeals. OFHEO employees shall refer Privacy Act appeals to the Privacy Act Appeals Officer.

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- 6.1.5 Providing information to other agencies or branches of the Federal government, including HUD and Congress, in response to requests for information, as necessary in the performance of their duties.
- 6.1.6 Attending an incoming and an exit interview. OFHEO employees shall attend incoming and exit interviews as scheduled by the FOIA Officer.
- 6.2 The Director of Congressional Affairs is responsible for analyzing and responding to written and verbal requests for information from Members of Congress, Congressional offices, and Congressional staff-members, after consulting with other OFHEO employees, as appropriate, and gathering copies of responsive data and documents.
- 6.3 The Director of Public Affairs is responsible for the following:
 - 6.3.1 Analyzing and responding to written and verbal requests for information from the press and from the public. The Director of Public Affairs shall respond to requests for information, which has already been determined to be public information (see list of documents in 4.0).
 - 6.3.2 Forwarding written requests for nonpublic information to the FOIA Officer for analyzing and responding. If written requests from the press involve nonpublic information, the Director of Public Affairs shall forward the request to the FOIA Officer.
- 6.4 The FOIA Officer is responsible for the following:
 - 6.4.1 Distributing copies of a request for information. The FOIA Officer shall offer the designated OGC FOIA Attorney a copy of all requests for information. The FOIA Officer shall offer the Director of Public Affairs a copy of a request made by a member of the press. The FOIA Officer shall distribute additional copies of

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a request to appropriate OFHEO employees, as appropriate to assist them in providing the FOIA Officer with prompt and complete access to relevant information in their possession.

- 6.4.2 Forwarding written and verbal requests for public information to the Director of Public Affairs for analysis and response.
- 6.4.3 Analyzing and responding to FOIA requests. After consulting with other OFHEO employees, as appropriate, and gathering copies of relevant data and documents, the FOIA Officer shall draft a response to the request. The FOIA Officer may forward the response to the designated OGC FOIA Attorney for prior OGC review. The FOIA Officer shall resolve the designated OGC FOIA Attorney's comments and shall draft and mail the response within the statutory limit of 20 days.
- 6.4.4 Offering *authorized OFHEO employees* a copy of the response. The FOIA Officer shall offer the designated OGC FOIA Attorney a copy of all responses. In addition, when analyzing and responding to a request from the press, the FOIA Officer shall offer the Director of Public Affairs a copy of the response.
- 6.4.5 Providing a copy of written requests for information to and coordinating with the Privacy Act Officer if a FOIA request raises Privacy Act issues.
- 6.4.6 Creating and maintaining the list of *authorized OFHEO employees* by name on the shared drive.
- 6.4.7 Drafting the annual FOIA report for the Deputy Director of OFHEO's signature. The report is due yearly on February 1st.

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- 6.5 The designated OGC FOIA Attorney is responsible for reviewing those responses to FOIA requests for legal sufficiency, which are forwarded by the FOIA Officer.
- 6.6 The FOIA Appeals Officer is responsible for the following:
 - 6.6.1 Distributing copies of a request. The FOIA Appeals Officer shall offer the FOIA Officer and the designated OGC FOIA Appeals Attorney a copy of all FOIA appeals. The FOIA Appeals Officer shall offer the Director of Public Affairs a copy of a FOIA appeal made by a member of the press. The FOIA Appeals Officer shall distribute additional copies of a FOIA appeal to appropriate OFHEO employees, as appropriate to assist them in providing the FOIA Appeals Officer with prompt and complete access to responsive information in their possession.
 - 6.6.2 Analyzing and responding to FOIA appeals. After consulting with other OFHEO employees, as appropriate, and gathering copies of responsive data and documents, the FOIA Appeals Officer shall draft a response to the appeal. The FOIA Appeals Officer may forward the response to the designated OGC FOIA Appeals Attorney. The FOIA Appeals Officer shall resolve the designated OGC FOIA Appeals Attorney's comments and shall draft and mail the response within the statutory limit of 20 days.
 - 6.6.3 Offering authorized OFHEO employees a copy of the response. The FOIA Appeals Officer shall offer the FOIA Officer and the designated OGC FOIA Appeals Attorney a copy of all responses. In addition, when analyzing and responding to an appeal from a member of the press, the FOIA Appeals Officer shall offer the Director of Public Affairs a copy of the response.
- 6.7 The designated OGC FOIA Appeals Attorney is responsible for reviewing all responses to FOIA appeals for legal

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sufficiency, which are forwarded for review by the FOIA Appeals Officer.

6.8 The Privacy Act Officer is responsible for the following:

6.8.1 Distributing copies of a request. The Privacy Act Officer shall offer the designated OGC Privacy Act Attorney a copy of all requests for information. The Privacy Act Officer shall offer the Director of Public Affairs a copy of a request made by a member of the press. The Privacy Act Officer shall distribute additional copies of a request to appropriate OFHEO employees, as appropriate to assist them in providing the Privacy Act Officer with prompt and complete access to responsive information in their possession.

6.8.2 Forwarding written and verbal requests for public information to the Director of Public Affairs for analyzing and responding.

6.8.3 Analyzing and responding to Privacy Act requests for information. After consulting with other OFHEO employees, as appropriate, and gathering copies of responsive data and documents, the Privacy Act Officer shall draft a response to the request. The Privacy Act Officer may forward the response to the designated OGC Privacy Act Attorney. The Privacy Act Officer shall resolve the designated OGC Privacy Act Attorney's comments and shall draft and mail the response.

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6.8.4 Offering *authorized OFHEO employees* a copy of the response. The Privacy Act Officer shall offer the designated OGC Privacy Act Attorney a copy of the response. In addition, when analyzing and responding to a request from a member of the press, the Privacy Act Officer shall offer the Director of Public Affairs a copy of the response.

6.8.5 Providing a copy of written requests to and coordinating with the FOIA Officer if a Privacy Act request raises FOIA issues.

6.8.6 Drafting the following Privacy Act reports, as required, for the Deputy Director of OFHEO's signature:

- The Biennial Privacy Act Report to the Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). This report is due on June 30 of each even-numbered year.
- The New System of Records Notice to Congress, and to the Administrator of the OIRA, OMB. This Notice is created when establishing a system of records, and is due at least 40 days before operating the system.
- The Altered System of Records Report to Congress and to the Administrator of the OIRA, OMB. This report is created when adding a new or routine use, exemption, or otherwise significantly altering an existing system of records, and is due at least 40 days before change to the system takes place.
- A New Matching Program Report, if required, to Congress and to the Administrator of the OIRA, OMB. This report would be created whenever OFHEO establishes a new matching program,

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and would be due at least 40 days before operating the program.

6.9 The designated OGC Privacy Act Attorney is responsible for reviewing those responses to Privacy Act requests for legal sufficiency, which are forwarded for review.

6.10 The Privacy Act Appeals Officer is responsible for the following:

6.10.1 Distributing copies of a request. The Privacy Act Appeals Officer shall offer the Privacy Act Officer and the designated OGC Privacy Act Appeals Attorney a copy of all Privacy Act appeals. The Privacy Act Appeals Officer shall offer the Director of Public Affairs a copy of a Privacy Act appeal made by a member of the press. The Privacy Act Appeals Officer shall distribute additional copies of a Privacy Act appeal to appropriate OFHEO employees, as appropriate to assist them in providing the Privacy Act Appeals Officer with prompt and complete access to responsive information in their possession.

6.10.2 Analyzing and responding to Privacy Act appeals. After consulting with other OFHEO employees, as appropriate, and gathering copies of responsive data and documents, the Privacy Act Appeals Officer shall draft a response to the appeal. The Privacy Act Appeals Officer may forward the response to the designated OGC Privacy Act Appeals Attorney. The Privacy Act Appeals Officer shall resolve the designated OGC Privacy Act Appeals Attorney's comments and shall draft and mail the response.

6.10.3 Offering *authorized OFHEO employees* a copy of the response. The Privacy Act Appeals Officer shall offer the Privacy Act Officer and the designated OGC Privacy Act Appeals Attorney a copy of all responses. In addition, when analyzing and

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responding to an appeal from a member of the press, the Privacy Act Appeals Officer shall offer the Director of Public Affairs a copy of the response.

6.11 The designated OGC Privacy Act Appeals Attorney is responsible for reviewing those responses to Privacy Act appeals for legal sufficiency, which are forwarded for review.

6.12 The Records Management Officer is responsible for the following:

6.12.1 Supporting *authorized OFHEO employees*, by making Office File Plans available to facilitate prompt and complete access to data and documents, which may be responsive to requests for information.

6.12.2 Supporting the Privacy Act Officer, by maintaining an inventory (list with descriptions) of any existing OFHEO systems of records. The Records Management Officer shall make this inventory available to the Privacy Act Officer and to the OFHEO OGC.

7.0 Record Types Created or Received:

- FOIA requests and response correspondence and associated released/redacted (and nonredacted) data and documents.
- FOIA appeals and response correspondence and associated released/redacted (and nonredacted) data and documents.
- Privacy Act requests and response correspondence and associated released/redacted (and nonredacted) data and documents.
- Privacy Act appeals and response correspondence and associated released/redacted (and nonredacted) data and documents.
- OFHEO Employee Oaths, Nondisclosure Oaths (for key contractor personnel).
- The list of *authorized OFHEO employees* by name.

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- The annual FOIA Report to the Attorney General of the United States (formerly to Congress).
- The Biennial Privacy Act Report.
- The New System of Records Notice.
- The Altered System of Records Report.
- The New Matching Program Report, as required.

8.0 Other Issues:

This section does not address all of the issues related to releasing information, but rather, answers certain frequently-asked questions:

- The list of *authorized OFHEO employees* (see list in Section 5.0) by name is available on the shared drive in the directory named "H:\shared\procedur\infomgt."
- Nonrevisable electronic copies of the OFHEO public information documents, which are created on or after 11/1/1996, will be maintained electronically by Public Affairs. This is so that they may be made available to the public electronically, through the OFHEO website, in accordance with the Electronic FOIA. Temporary electronic storage may be in the directory named "H:\shared\foiaelec."
- As the 1996 amendments to the FOIA require, the FY98 annual FOIA report will be addressed to the Attorney General of the United States and will be due February 1, 1999, and yearly thereafter.
- In OFHEO Guidelines, "shall" is used to mean "mandatory;" "should" is used to mean "suggested;" and "may" is used to mean "optional."