

OFHEO

Director's Advisory

Policy Guidance

Issuance Date: July 25, 2005

Doc. #: PG-05-003

Subject: Examination for Mortgage Fraud Reporting

To: Examiners and Associate Directors
Chief Executive Officers of Fannie Mae and Freddie Mac

I. Purpose and Scope.

This Guidance sets forth procedures for reporting by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) of mortgage fraud under 12 C.F.R. part 1731 to the Office of Federal Housing Enterprise Oversight (OFHEO) consistent with the safety and soundness responsibilities of OFHEO under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

II. Statement of Policy.

Mortgage fraud has an impact on the safe and sound operations of the Enterprises. The Enterprises must have a system in place reasonably designed to detect, investigate, and report mortgage fraud or possible mortgage fraud.

III. References.

- a. Mortgage Fraud Reporting, 12 C.F.R. part 1731.

IV. Definitions.

- a. **“Director”** means the Director of OFHEO, or his or her designee.
- b. **“EIC”** means the Examiner-in-Charge of Fannie Mae and the Examiner-in-Charge of Freddie Mac, as appropriate, or his or her designee, which designee may be an OFHEO staff member in an office other than the Office of Examination Oversight.
- c. **“Identification” and/or “notification”** used in connection with the identification of mortgage fraud or possible mortgage fraud by an Enterprise, or in connection with the notification to an Enterprise of such fraud by law enforcement or other government

authority, means the time at which the central location for review of such fraud, established by Enterprise procedures, identifies or is notified about such fraud, as specified in Part VI of this Guidance.

d. Mortgage fraud means a material misstatement, misrepresentation, or omission relied upon by an Enterprise to fund or purchase — or not to fund or purchase — a mortgage, including a mortgage associated with a mortgage backed security or similar instrument issued or guaranteed by the Enterprise. Such mortgage fraud includes, but is not limited to, false information contained in identification and employment documents, false mortgagee or mortgagor identity, and fraudulent appraisals; theft of custodial funds, non-remitted payoff funds, misrepresentations of borrower funds, and property flipping where designed to inflate falsely property value.

e. Possible mortgage fraud means that an Enterprise has a reasonable belief, based upon a review of information available to the Enterprise, that mortgage fraud may be occurring or has occurred.

V. Unsafe and Unsound Conduct.

An Enterprise may not require the repurchase of or may not decline to purchase a mortgage, including a mortgage associated with a mortgage backed security or similar instrument issued or guaranteed by the Enterprise, or require or decline to require another make-whole arrangement because of possible mortgage fraud without promptly reporting such possible mortgage fraud to the EIC as provided in this guidance.

VI. Types of Mortgage Fraud or Possible Mortgage Fraud to be Reported.

An Enterprise must report mortgage fraud or possible mortgage fraud when it:

- a.** Identifies that a board member, officer, employee, or contractor engaged by the Enterprise has or may have perpetrated such fraud.
- b.** Identifies institutional (seller/servicer) fraud, such as lack of collateral, theft of custodial funds, non-remittance of pay-off, or multiple delivery of same loan.
- c.** Receives notification by law enforcement or other governmental authority that such authority is conducting an investigation or prosecution of mortgage fraud involving loans owned by the Enterprise, absent a legal directive from such authority not to report such fraud.
- d.** Identifies a pattern of related mortgage fraud or possible mortgage fraud as defined under reviewable internal procedures or standards.
- e.** Identifies that there is a substantial likelihood that the mortgage fraud or possible mortgage fraud will receive significant public exposure or publicity.

f. Identifies mortgage fraud or possible mortgage fraud that is otherwise serious or significant to the Enterprise.

VII. Procedures for Submission of the MFIN and Quarterly Status Reports.

a. Prompt Submission of MFIN.

An Enterprise must submit a Mortgage Fraud Incident Notice (“MFIN”), which will be provided by the EIC, so that it is received by OFHEO promptly after it identifies or is notified by authorities of the mortgage fraud or possible mortgage fraud, but not more than 10 business days after such identification or notification under Part VI. The MFIN must be sent electronically through a secure method, as determined by OFHEO, to:

Examiner-in-Charge for Fannie Mae or Freddie Mac, as appropriate
Office of Examination
Re: MFIN
Office of Federal Housing Enterprise Oversight
Washington, DC 20552

b. Immediate notification and submission of an MFIN.

In situations involving mortgage fraud requiring the immediate attention of OFHEO, the Enterprise must immediately notify, by telephone or electronic communication, the appropriate Examiner-in-Charge, or his or her designee, in addition to submitting an MFIN under paragraph a. Situations requiring immediate attention include those where the Enterprise has identified that there is a substantial likelihood that the mortgage fraud or possible mortgage fraud will receive significant public exposure or publicity; where the Enterprise has received notification by a law enforcement or other authority that such authority is conducting an investigation or prosecution of mortgage fraud involving loans owned by the Enterprise; or where the Enterprise has identified that mortgage fraud or possible mortgage fraud may have a significant impact on the safe and sound operations of the Enterprise.

c. Supplemental information and corrections to MFIN.

1. Supplemental information. The MFIN must be used to report supplemental information to an initial MFIN, either identified by the Enterprise or requested by the EIC, unless the EIC requests that the information be submitted in a different format.
2. Corrections. The MFIN must be used to report corrections to the initial MFIN, unless the EIC requests the correction be submitted in a different format.

d. Quarterly status reports of cases.

Within 10 business days after the end of each calendar quarter, each Enterprise must submit to the EIC, in electronic form, a quarterly report of the status of cases submitted in

the quarter on the MFIN. The status report must contain, as a minimum, the case number and case name (as such case number and name was reported by the Enterprise on the MFIN), type of mortgage fraud or possible mortgage fraud, estimated number of loans involved, estimated total unpaid balance of loans, State in which properties are located, and status of the case. Status of the case should include whether it is under continued investigation by the Enterprise, whether it is closed because no fraud was found, closed because it was referred to law enforcement or other governmental authorities, or closed because of some other resolution. The case should be removed from the status report the quarter following its closure.

e. Retention of records.

An Enterprise must retain a copy of the MFIN and each quarterly status report and all original supporting documentation or business record equivalent in a central location for a period of at least five years from the date the MFIN was submitted. All supporting documentation must be made available to OFHEO and other appropriate law enforcement or other governmental authorities upon request.

f. No disclosure of submission of an MFIN; Notification of law enforcement and other third parties.

The Enterprise or its board members, officers, employees, or agents who submit an MFIN may not disclose that an MFIN has been submitted without the prior written approval of the Director of OFHEO or unless required by law. This requirement does not prohibit the notification of appropriate law enforcement or other governmental authorities of the mortgage fraud or possible mortgage fraud; does not prohibit an Enterprise from submitting information to any appropriate governmental or private third parties; and does not prohibit an Enterprise from taking any legal or business action it may deem appropriate, including any action involving the party or parties connected with the mortgage fraud or possible mortgage fraud.

g. No waiver of privilege.

An Enterprise does not waive any privilege it may claim under law by submitting an MFIN.

h. Acceptance of other formats.

In lieu of an MFIN, the EIC may, upon written notice to each Enterprise, accept reports of mortgage fraud or possible mortgage fraud in a format promulgated by any Federal agency that has jurisdiction over the reporting of mortgage fraud or possible mortgage fraud by the Enterprises.

VIII. Internal Controls and Procedures; Training.

a. General.

An Enterprise shall establish adequate and efficient internal controls and procedures and training to ensure an effective system to detect, investigate, and report mortgage fraud or possible mortgage fraud under this part.

b. Board of Director oversight and conformance report.

1. Oversight. The Board of Directors of an Enterprise, or a committee of the Board, shall cause the Enterprise to conduct a review of the anti-fraud detection, investigation, and reporting policies at least annually, and shall document its consideration of the results of that review in the minutes of the Board or Board committee.
2. Conformance report to OFHEO. The Board of Directors, or a committee of the Board, shall cause the Enterprise to submit to the EIC, within 150 days of the issuance of this Guidance, a summary report describing the Enterprise's conformance of its practices with this Guidance. The report shall include a summary of the plans, policies, and procedures that have been developed and all other actions taken to comply with the provisions of this Guidance. The Board, or a committee thereof, shall cause to be submitted annual updates to the initial report.

c. Controls and procedures.

An Enterprise's mortgage fraud detection, investigation, and reporting system should include, at a minimum, the following types of controls and procedures to ensure the system's effectiveness:

1. Mortgage fraud officer. Designation of a management official with overall responsibility for the mortgage fraud detection, investigation, and reporting system ("mortgage fraud officer");
2. Central reporting point. A central point to report mortgage fraud;
3. Central repository(ies). Central repositories for mortgage fraud information;
4. Continued business. Designation of the mortgage fraud officer(s) or senior management officer(s) to approve any continued business with any person or entity suspected of mortgage fraud;
5. Internal publication. Internal publication of the mortgage fraud reporting procedures and anti-fraud policies;

6. External publication. External publication of the Enterprise's contacts to receive notices or tips of mortgage fraud; and

7. Other. Such other standards as provided by OFHEO.

d. Training.

1. General. The training program must be designed to ensure that employees receive adequate training commensurate with their individual duties and responsibilities to ensure the effectiveness of the Enterprise's systems to detect, investigate, and report mortgage fraud or possible mortgage fraud.

2. Content. At a minimum, the training program should address:

- i. Types and levels of training;
- ii. Criteria for selecting employees for the various types and levels of training;
- iii. Frequency of training;
- iv. Refresher training;
- v. Certification of training completion; and
- vi. Such other matters as provided by OFHEO.

IX. Supervisory Action.

1. General.

Failure by an Enterprise to comply with 12 C.F.R. part 1731 and this Guidance may subject the Enterprise or members of the Board of Directors, officers, or employees thereof to supervisory action by OFHEO under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, including but not limited to, cease-and-desist proceedings and civil money penalties.

2. Errors or omissions.

Failure to report on a timely basis, or errors or omissions in reporting mortgage fraud or possible mortgage fraud, should be remedied by the timely filing of an initial MFIN or corrected MFIN, as appropriate, an identification of the error, why it occurred, and corrective action taken.

3. Preservation of existing authority.

Nothing in this Guidance in any way limits the authority of OFHEO to otherwise address unsafe or unsound conditions or practices or violations of applicable law, regulation or supervisory order. Action referencing the Guidance may be taken separate from, in conjunction with, or in addition to any other enforcement action available to OFHEO. Compliance with the Guidance in general would not preclude a finding by the agency that an Enterprise is otherwise engaged in a specific unsafe or unsound practice or is in an unsafe or unsound condition, or requiring corrective or remedial action with regard to such practice or condition. That is, supervisory action is not precluded against an Enterprise that has not been cited for a deficiency under this Guidance. Conversely, an Enterprise's failure to comply with one of the supervisory requirements set forth in the Guidance may not warrant a formal supervisory response from OFHEO, if OFHEO determines the matter may be otherwise addressed in a satisfactory manner. For example, OFHEO may require the submission of a plan to achieve compliance with the particular requirement or standard.