



REGULATORY & HOUSING POLICY

DAVID A. CROWE

Senior Staff Vice President

November 21, 2007

Mr. Alfred Pollard
General Counsel
Office of Federal Housing Enterprise Oversight
1700 G Street, NW
4th Floor
Washington, DC 20552

[Transmitted electronically to RegComments@OFHEO.gov]

Attention: Comments/Revised Draft Examination Guidance on Conforming Loan
Limit Calculations

Dear Mr. Pollard:

On behalf of the 235,000 members of the National Association of Home Builders (NAHB), this letter responds to the request for comments issued by the Office of Federal Housing Enterprise Oversight (OFHEO) in the Federal Register on October 22, 2007¹ regarding the Revised Draft Examination Guidance (the Revised Guidance) for calculation of the conforming loan limit (CLL) for Fannie Mae and Freddie Mac. The Revised Guidance modifies OFHEO's original proposal that was posted for comment on the OFHEO website on June 20, 2007. Both the original and revised proposals would establish procedures to incorporate declines in the statutory house price index used in the annual conforming loan limit (CLL) calculation.

NAHB submitted comments opposing the original proposal in a letter dated July 19, 2007. As we stated in our earlier letter, NAHB strongly opposes the proposed guidance. Not only is it bad public policy in the midst of the ongoing housing correction and mortgage market turmoil, it is not allowed under current law which provides the CLL may only be adjusted based on an increase in the statutory house price index. NAHB also faulted OFHEO for not following the Administrative Procedures Act (APA) in issuing the original proposal, including a full notice and comment request in the *Federal Register*. NAHB also raised this concern in separate correspondence with the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) in a letter dated August 2, 2007. Our letters to OFHEO and OIRA are attached and are incorporated into these comments by reference.

¹ 72 FR 59545

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NAHB is pleased that OFHEO has acceded to our request and has published the Revised Guidance in the *Federal Register*, for the Guidance is clearly significant in terms of Executive Order 12866 and the OMB Bulletin on Good Guidance Practices.² NAHB also appreciates OFHEO's clarification that it will not lower the CLL in 2008 from the current level of \$417,000. Despite these welcome steps toward transparency and stability, NAHB's fundamental concerns remain the same as when NAHB submitted comments to OFHEO on the original proposal. NAHB steadfastly believes that:

- there is no legal authority to lower CLLs;
- the Guidance actually does have the effect of law, so it should be issued as a regulation subject to the procedural protection of the APA;³
- any CLL reduction would be deeply harmful to the housing finance system;
- the OFHEO proposal is needlessly complicated and it will distort housing markets; and,
- the "grandfathering" provision should be tied to date of commitment.

No Legal Authority to Lower CLLs

As OFHEO describes in the introduction to the Revised Guidance, for twenty –five years of practice, Fannie Mae and Freddie Mac (collectively, the Enterprises) raised the CLL when necessary in accordance with the data supplied by the Federal Housing Finance Board (FHFB), as authorized by current statutes.⁴ OFHEO states, that it effectively began to set CLLs in 2004 by issuing guidance.⁵ OFHEO determined CLLs in the same manner as the statutes delegate this responsibility to the Enterprises. Therefore, OFHEO's approach indicates the belief that the CLL determination method of 12 USC §1717 and §1454 is the required process.

The statutorily authorized approach does not contemplate a decrease in the CLL. It speaks only of "increase", not "change." One must assume that Congress intended to use the word it did use, rather than impute a broader word that includes not only the statutory language, but also its opposite. If Congress had intended to authorize an increase and the opposite of an increase, it was quite capable of doing so. However, it chose the one-directional term "increase" in two separate statutes.

Concept of Negative Increase is Unauthorized

OFHEO asserts that a decrease in the CLL is authorized as a "negative increase." NAHB submits that this claim carries no weight and, therefore, is unauthorized under current statutes. Though Congress had the freedom to choose a term that embraced both increases and decreases, it chose the narrower term that excludes decreases. The term "negative increase" is unknown to the law, as is its logical opposite "negative decrease." Neither phrase is found in the

² 72 FR 3432, January 25, 2007.

³ 5 USC 551 *et seq.*

⁴ 12 USC 1717(b)(2) and 12 USC 1454(a)(2).

⁵ 72 FR 59545, at 59546.

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federal case law or the Code of Federal Regulations. Without any basis in law, OFHEO appears to be using “negative increase” as a semantic device to assert authority it does not have.

Proposed Guidance is a Regulation

As the Proposed Guidance is constructed, the Enterprises do not have a choice of whether to comply with the CLLs set by OFHEO. If an Enterprise purchases loans higher than a new, reduced CLL, OFHEO says it will take action against that Enterprise, alleging that the loan purchases may impair the safety and soundness of the Enterprise. OFHEO can impose any of a number of mandatory restrictions on new obligations. OFHEO’s word on this point would literally be the law. Since the Guidance would have the force and effect of law, and the Guidance is a statement of general applicability and future effect, it is actually a regulation under the Administrative Procedure Act⁶ and it must be issued in accordance with the requirements of that Act. APA promulgation would subject the rule to judicial review.

CLL Reduction Is Bad Public Policy

As NAHB argued in its aforementioned attached letters, a decrease in the CLL is bad public policy. A decline in the CLL has a fundamentally different effect on housing markets than an increase in the CLL. A decrease in the CLL will act as constraint, lowering the maximum level of conforming loans and reducing the number of loans that are eligible for the liquidity advantages provided by government-sponsored enterprise (GSE) secondary markets. A decrease in the CLL acts as a binding constraint on the market as some loans would be disallowed from GSE purchase that would have qualified under the previous CLL.

A decrease in the CLL is not just a constraint on the GSE purchases, it is a radical change in the mortgage market. At this time of financial market turmoil, Fannie Mae’s and Freddie Mac’s mission to provide mortgage liquidity, which is currently a preeminent concern, would be diminished under the proposed guidance. NAHB believes that it is extremely inappropriate to constrain Fannie Mae’s and Freddie Mac’s critical support to the housing finance market at this volatile and uncertain juncture.

Revised Guidance Exacerbates Complicated CLL Calculation Method and Market Distortions

The Revised Guidance clarifies that any declines in the CLL always will be deferred for one year. Further, the Revised Guidance raises the *de minimis* amount for a decline in the CLL from one percent to three percent. Specifically, OFHEO proposes that:

“Decreases would be deferred until they reach a cumulative three percent or until they are used to offset future increases, so that ultimately cumulative percentage changes in the maximum loan limits would not exceed cumulative percentage changes in the [FHFB] price series (after any adjustments for methodological changes).”

⁶ *Appalachian Power Co. v. E.P.A.*, 208 F.3d 1015, C.A.D.C., 2000.

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If NAHB understands the proposed calculation method correctly, the CLL would not be reduced in the first year after a decline in the FHFB data, but remain unchanged. Then, if the subsequent year's FHFB data showed an increase exceeding the previous decline, the decline would be netted against that increase and the CLL would be raised by the net amount of the change. However, if the FHFB data show another decline, the latter decline would be deferred one year and the CLL would be adjusted by the decline of the prior year, if that decline is three percent or greater. However, if the decline in the CLL is less than three percent, the prior year's decrease will be deferred another year and the CLL would remain unchanged. In the following year, the deferred decreases will be netted against any increase, or added to any decrease. This process will be continued until the net decrease accumulates to three percent or more, at which time the CLL is altered by the entire net negative change, after a one-year deferral.

NAHB believes the proposed calculation approach is unnecessarily complicated and will greatly increase the probable shock to the housing market and the economy. Under OFHEO's proposal, a fall in the FHFB price data will result in at least one year of unchanged CLLs, and the CLLs will only fall if they fall by a large amount. OFHEO asserts that the proposed method will provide clarity to the market since participants will know that a decline is forthcoming and the minimum level for the coming year. NAHB disagrees.

The proposed method magnifies abrupt changes in the market and increases the risk to housing market participants. Once a negative change in the index is "on the books", the actual adjustment for subsequent years will still be uncertain until the November immediately preceding the year in question, since that result is netted against or added to the ongoing cumulative tally. For example, assume that deferred declines had accumulated to the three percent threshold, and thus the CLL could decline by three percent in the following year. OFHEO argues that their method will allow lenders to factor this into their loan making decisions by reducing their estimate of the following year's CLL by three percent. However, the actual level of the CLL would not be known until the FHFB data were announced in November. If the new price data showed an increase, the cumulative total could fall below three percent and no change in the CLL would occur. Lenders who had reduced their conforming loan threshold in anticipation of a three percent decline would have unnecessarily restricted access to GSE financing. Such a premature financing constraint would be particularly acute for purchasers of newly built homes who typically lock-in their financing up to a year prior to closing.

To mitigate potentially negative impacts from a decline in the CLL, NAHB recommends continuation of the current practice where declines in the FHFB index are netted out from future increases, so that decreases are incorporated in the calculations, but in a manner where the CLL would never decline from the present level. NAHB maintains that the current practice achieves the same objective as OFHEO's proposal without confusion and disruption to the market. Although there is also a level of uncertainty about the level of the CLL under the current procedures, at least there is certainty that the limit will not decline, consistent with current statutory authority.

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Loans Should Be “Grandfathered” At Time of Commitment

NAHB requests a further revision in the grandfathering provisions. The Revised Guidance clarifies the grandfathering language in the original proposal to provide that loans that were conforming at the time of origination would continue to be considered as conforming loans, regardless of any future declines in the CLL or modification of a loan. While NAHB appreciates this clarification, we believe that grandfathering should be tied to date of commitment, rather than date of origination. This would avoid negative impacts on borrowers and lenders that could occur from a change in the CLL between loan commitment and closing. As noted above, buyers of newly constructed homes would be particularly vulnerable due to the lengthy financing pipeline for new homes and the longer time between loan commitment and closing.

Conclusion

In closing, NAHB reiterates its strong opposition to the Proposed Guidance and urges OFHEO to withdraw it. NAHB is fundamentally opposed to any guidance or regulation that results in a decline in the conforming loan limit. Not only is this bad public policy in the wake of the ongoing housing and mortgage market correction, it is not authorized under current law.

Please feel free to contact me or Michelle Hamecs, NAHB’s Assistant Staff Vice President for Housing Finance, at 202-266-8425 if you have any questions regarding this letter and NAHB’s recommendations.

Respectfully,



David A. Crowe
Senior Staff Vice President
Regulatory and Housing Policy

DAC/mch

Attachments:

NAHB Letter to Mr. Alfred Pollard, OFHEO, July 19, 2007
NAHB Letter to Susan Dudley, OIRA/OMB, August 2, 2007

ATTACHMENT

1



REGULATORY & HOUSING POLICY

DAVID A. CROWE

Senior Staff Vice President

July 19, 2007

Mr. Alfred Pollard
General Counsel
Office of Federal Housing Enterprise Oversight
1700 G Street, NW
4th Floor
Washington, DC 20552

Reference: Proposed Guidance on Conforming Loan Limit Calculations

Dear Mr. Pollard:

On behalf of the 235,000 members of the National Association of Home Builders (NAHB), I welcome the opportunity to comment on the Office of Federal Housing Enterprise Oversight (OFHEO) Proposed Guidance on Conforming Loan Limit (CLL) Calculations for Fannie Mae and Freddie Mac (collectively, the Enterprises). The Proposed Guidance would establish procedures to incorporate declines in the statutory house price index used in the annual conforming loan limit calculation.

By their charters, Fannie Mae and Freddie Mac are restricted from purchasing mortgages with loan amounts above the conforming loan limit. Interest rates on conforming loans are typically 25 basis points or more below those on nonconforming loans. Under current law, the conforming loan limit is adjusted annually on the basis of the October-to-October percent increase in the average home price index computed by the Federal Housing Finance Board (FHFB). Changes in the conforming loan limit also impact mortgages backed by the Federal Housing Administration (FHA) and the Department of Veterans Affairs (VA), as FHA loan limits and the VA loan maximum guaranty are indexed to the CLL.

OFHEO's proposal would require that a decline in the price index be deferred for a year and then netted out from the following year's increase in the loan limit. If, instead, the index declines in the following year, the limit is adjusted by the previous year's decrease and the latter decline is deferred to the next year. Declines of less than one percent would be deferred until the cumulative declines exceed one percent. Loans that were within the conforming loan limit at the time of origination would be grandfathered over the life of the loan, regardless of whether the loan limit declines below the limit in effect at origination.

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NAHB strongly opposes the Proposed Guidance or any adjustment procedure that would result in a decline in the conforming loan limit. OFHEO's proposal ignores current law relating to the loan limit adjustment, which does not provide for a decline in the CLL. NAHB also questions OFHEO's method for promulgating the Proposed Guidance, and particularly the method that OFHEO employed to seek public comment. Given the importance of the conforming loan limit to the housing and mortgage markets, NAHB believes that the Proposed Guidance should have been promulgated pursuant to the Administrative Procedures Act, including a full notice and comment through publication in the Federal Register, rather than just being posted on OFHEO's Web site. Further, NAHB objects to the Proposed Guidance on public policy grounds, because a downward adjustment in the conforming loan limit would have significant negative impacts on home buyers and the mortgage market that would damage the already fragile situation.

NAHB supports the current method for calculating the conforming loan limit based on the annual percent increase in the FHFB housing price index. When the index has declined the loan limit has remained unchanged and the decrease has been netted out of future increases. The current system has worked well for home buyers, builders, lenders and other market participants. Moreover, it is consistent with current statutory authority. OFHEO has presented no compelling justification for abandoning the established loan adjustment procedure in favor of a more complex and confusing process.

We, therefore, respectfully request that OFHEO withdraw the Proposed Guidance and adopt a system for netting out declines in the index consistent with current statutory authority and the existing CLL adjustment protocol.

Background

As noted, the Enterprises are restricted under their charters from purchasing mortgages with amounts greater than the conforming loan limit. Current law governing the CLL adjustment provides that the limit is adjusted annually by “adding to each such [previous] amount a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Housing Finance Board (emphasis added).”¹

The current procedure was enacted by the Housing and Community Development Act of 1980 (P.L.96-399). From 1981 until 2004, the Enterprises announced the loan limit changes pursuant to the statutory procedure outlined above. In 2004, OFHEO announced that it would calculate and announce the conforming loan limit in future years pursuant to Supervisory Guidance SG-04-01 (February 2004). OFHEO took this action to address inconsistencies by the

¹ 12 USC 1717(b)(2) and 12 USC 1454(a)(2).

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Enterprises in handling price index declines as well as in incorporating technical changes in the FHFB index.²

As OFHEO notes in the 2004 Supervisory Guidance, there were three prior occasions when there was a decline in the October-to-October FHFB index. In 1990, the Enterprises reduced the conforming loan limit by \$150 based on a 0.07 percent decline in the FHFB index. The index declined again in 1993 and 1994, but the Enterprises chose to keep the conforming loan limit unchanged. The Enterprises subsequently raised the limit in 1996 to reflect an increase in the index from October 1994 to October 1995. In 1997, the Enterprises chose not to increase the limit by the full amount of the 8.44 percent increase in the index, and instead increased the 1998 limit by only 3.67 percent to adjust for the 1993 and 1994 declines.

In 2006, after a 0.16 percent decline in the index, OFHEO announced that the decline would be deferred one year and that OFHEO would revise the existing 2004 Supervisory Guidance to address how to handle declines in the index. The purpose of the Proposed Guidance is to address this and related issues.

NAHB's comments on the Proposed Guidance are outlined further below. But, first we address what we believe is a lack of statutory authority to implement such a procedure, the improper promulgation of the Proposed Guidance, and our concerns regarding potential adverse impacts of the Proposed Guidance on home buyers, builders, lenders and the housing market.

Current Law Does Not Authorize Reductions in the Conforming Loan Limit

A review of the 1980 Act and its legislative history verifies that Congress intended that loan limit adjustments only reflect increases in FHFB index. The 1980 Act is silent on how to address declines in the statutory index. Like the Act, the legislative history speaks only of adjusting the maximum allowable limit by adding to the existing limit "a percentage equal to the percentage of increase during the 12-month period ending with the previous October" in the national average home price measured in the FHFB index.³ According to the Senate report that accompanied the 1980 Act, the adjustment procedure was implemented "to provide the [Enterprises] with the capacity to respond to changing conditions over time"⁴, by providing for an increase in the limit equal to the percentage increase in the FHFB house price index.

Given that current law only authorizes increases and additions to the conforming loan limit, it may be inferred that there is no clear statutory authority for subtractions from or decreases to the CLL. When the FHFB index has declined, such as in 1993 and 1994, the conforming loan limit remained unchanged. An October 1994 GAO report of these occurrences supported keeping the limit unchanged since the current law does not require a decline in the

² For example, in 2003, the Enterprises failed to incorporate a revised decline in the October 2002 FHFB index when calculating the 2004 loan limit. As a result, the 2004 limit was about \$1,650 higher than it should have been. See Proposed Guidance, pp. 3-4.

³ House Conference Report 96-1420, September 26, 1980, to accompany S. 2719.

⁴ Senate Report, No. 96-736, May 15, 1980, to accompany S. 2719.

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limit when the price index declines.⁵ (As noted earlier, these declines were subsequently netted out of future increases in the limit.)

NAHB is aware that H.R. 1427, *The Federal Housing Finance Reform Act of 2007*, would provide authority to increase or decrease the conforming loan limit based on the percent change (up or down) in a house price index to be developed by the new regulator. NAHB opposes this provision on the grounds that it is bad public policy. However, pending enactment of this authority, NAHB maintains that the loan limit can only be increased, but not decreased, under current statutory authority.

Proposed Guidance Was Improperly Promulgated

The Proposed Guidance Is Improper Because It Does Not Explain Or Clarify A Law Or Regulation.

According to the Executive Office of the President, “guidance” is defined as “an agency statement of general applicability and future effect, other than a regulatory action (as defined in Executive Order 12866, as further amended, section 3(g)), that sets forth a policy on a statutory, regulatory or technical issue or an interpretation of a statutory or regulatory issue.”⁶ As an agency of the Department of Housing and Urban Development, OFHEO is an Executive Branch agency; therefore, it is bound by this definition. OFHEO makes no reference to any statute or regulation that allows it to set loan limits; it is mandated only to ensure the Enterprises are “adequately capitalized and operating safely.”⁷

Though numerous powers are extended to the OFHEO Director, Congress did not grant OFHEO the power to interfere in the mortgage markets directly by setting limits on individual mortgages that may be purchased by the Enterprises.⁸ Neither has OFHEO promulgated any regulation through the notice and comment process that would call for direct intervention in mortgage markets by setting any kind of mortgage level, ceiling, or floor. No reading of any OFHEO regulation would cause one to believe that OFHEO claimed therein the right or power to raise or lower mortgage limits. OFHEO has, at most, the right to take steps to require the Enterprises to take measures to reduce overall risk to the safety of capital.

The Proposed Guidance Is A Significant Guidance Document, And It Should Have Been Reviewed By OMB.

As defined by the President in Executive Order 12866, as amended by Executive Order 13422, a Significant Guidance Document is one that may reasonably be anticipated to:

⁵ “*Implications of Alternative Methods of Adjusting the Conforming Loan Limit*”, U.S. General Accounting Office, October 1994 (GAO/RECD-95-6).

⁶ Office of Management and Budget, “*Final Bulletin for Agency Good Guidance Practices*,” 72 Fed. Reg. 3432, January 25, 2007.

⁷ 12 USC 4513.

⁸ See 12USC 1717(b)(2).

(A) lead to an annual effect of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or

(D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order;⁹

The Proposed Guidance may materially alter rights or obligations not only of the Enterprises themselves, but also of all the primary lenders and home mortgage borrowers who are the intended beneficiaries of the Enterprises' charters. Because the Proposed Guidance is a Significant Guidance Document, it should have received the review prescribed Executive Order 12866, and there is no claim or evidence of such review. Therefore, it must be retracted until it can undergo that review.

The Proposed Guidance Is Actually A Regulation That Must Be Issued In Accordance With The Administrative Procedure Act.

In order to issue regulations, OFHEO must comply with the Administrative Procedure Act.¹⁰ There can be no dispute that the issuance of the Proposed Guidance does not comply with the requirements for issuing a regulation as set forth in 5 USC 553.

As defined by Executive Order 12866,

“Regulation” means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.¹¹

The Proposed Guidance sets forth a formula and a declaration of intended future conduct, applicable to both Enterprises, with the force and effect of law. Section II(6) of the Proposed Guidance states that purchasing mortgages larger than the loan limit will be considered an unsafe and unsound practice. The Proposed Guidance is a statement of general applicability and future effect, from which legal consequences will flow. The courts also have recognized that this kind

⁹ E.O.12866 §3(h)(1).

¹⁰ 12 USC 4526(b), 5 USC 553.

¹¹ E.O.12866 §3(e).

of “guidance” is actually a rule that must comply with the APA.¹² The Proposed Guidance is binding, and it substantially broadens the underlying rules, especially Parts 1710, 1720, and 1777 of Title 12, CFR. Therefore, the Proposed Guidance is an illegal rulemaking. It must be withdrawn, and any resubmission must comply 5 USC 553.

A Decrease in the Conforming Loan Limit Is Bad Public Policy

Not only does the Proposed Guidance contravene current law, it is bad public policy. NAHB believes that a decline in the CLL would have adverse economic impacts, with negative ramifications for key segments of the housing market (consumers, builders and lenders). NAHB also believes that the Proposed Guidance would diminish the success of the housing missions of the Enterprises, FHA, and VA.

Adverse Economic Impacts

A reduction in the CLL would exacerbate and prolong the impact on the national economy of a housing market slowdown, such as the one we are currently experiencing. Since the CLL adjustment procedure is based on an historic home price index, incorporating a decline in the index into future years’ mortgage limits generates a downward bias in home prices. This could have a devastating impact on the housing market and the economy as home buyers would be hesitant to purchase homes with mortgage amounts above the current CLL due to higher financing costs. This decline in demand would further soften home prices and inventories of new and existing homes would rise, further dampening home prices. Eventually, the downward spiral in home prices would be worked through, but with the lower CLL dampening home prices, it would take longer, thus prolonging the drag on economic growth from the slumping housing market. Clearly, there is no economic benefit to this scenario.

Negative Ramifications on the Housing Market

One of the hallmarks of the U.S. housing finance system is its efficiency and capacity to attract funds globally. Any factor that increases market uncertainty could have ramifications on these attributes. The annual CLL adjustment process is one such factor. Each year there is some uncertainty as to the level of the new CLL. Lenders report that home buyers and re-financers factor the level of the CLL into their financing decisions. However, because the loan limit currently can only increase, there are no adverse impacts on existing loan commitments.

The possibility of a reduction in the CLL would create market uncertainty and significant negative repercussions for consumers, builders and lenders. Housing consumers would be impacted by higher financing costs for non-conforming loans. Builders and lenders would face operational disruptions.

¹² *Appalachian Power Co. v. E.P.A.*, 208 F.3d 1015, C.A.D.C., 2000.

Impact on Home Buyers and Mortgage Borrowers

The level of the CLL is a key factor in the home buying decision. Many home buyers typically arrange for financing based on the level of the CLL to avoid higher financing costs for loans above the CLL. Numerous studies have shown that conforming loans carry interest rates 25 basis points or more below non-conforming loans. Consumers purchasing new homes arrange for mortgages at the conforming limit up to a year prior to closing. Buyers of existing homes and borrowers re-financing seek loans at the conforming limit. Downward adjustments to the CLL would harm borrowers in the pipeline through the imposition of more expensive non-conforming financing.

For example, assume that the CLL were to decline one percentage point from the present level of \$417,000 to \$412,800 (consistent with the one-percent threshold OFHEO has proposed and loan limit rounding procedures). Borrowers seeking to close on a new loan or trying to re-finance an existing \$417,000 loan would have to either come up with an additional \$4,200 in down payment to keep the loan at the conforming limit, or pay approximately 25 basis points more for a non-conforming mortgage since their loan amount is now above the new CLL. Table 1 below shows the impact of an increase in mortgage rates from 6.25 percent to 6.50 percent on a \$417,000 loan. The monthly payment on the loan would increase about \$70.00, or \$840 per year and the borrower would pay an additional \$24,500.00 in interest payments over the term of a 30-year fixed rate loan.

TABLE 1: U.S.A. Households Priced Out of the Market by an Increase in Interest Rates

Area	Mortgage Rate	Loan Amount	Monthly Mortgage Payment	Taxes and Insurance	Minimum Income Needed	Households That Can Afford House
United States	6.25%	\$417,000	\$2,691	\$573	\$139,860	9,502,422
United States	6.50%	\$417,000	\$2,760	\$573	\$142,840	9,073,194
Difference		\$0	\$69	\$0	\$2,980	(429,228)

Calculations assume a 10% down payment and a 45 basis point fee for private mortgage insurance.
A Household Qualifies for a Mortgage if Mortgage Payments, Taxes, and Insurance are 28% of Income

NAHB estimates that approximately 430,000 households would be priced out of the market, meaning that they would not be able to qualify for the higher-priced non-conforming financing and may have to postpone a new home purchase or purchase a lower-priced home.

Reductions in the CLL may also impair the ability of borrowers to refinance into lower-cost conforming mortgages. This could be especially problematic for some subprime borrowers as they attempt to refinance out of high-cost subprime mortgages. Given the current high level of concern among policy makers about the impact of the recent turmoil in the subprime mortgage market on the economy, it does not make sense to diminish the role the Enterprises could have in resolving the subprime market problems.

Impact on Builders

The level of the CLL is also a key factor for builders who may target their market to home buyers seeking conforming financing. Since buyers of newly constructed homes typically will lock-in their financing up to a year prior to closing, if the CLL were to decline between the loan commitment and closing, the buyer may not be able to qualify for the higher-cost non-conforming financing, or may not be able to increase their downpayment to qualify for a conforming mortgage. As a result, the buyer may have to cancel their purchase, adding to the inventories of unsold homes, or the builder may need to make significant concessions to sell these homes, cutting into their expected returns. Either would exacerbate the weakness in home prices.

Impact on Lenders

The CLL affects all facets of mortgage lending operations, from loan origination to servicing to sale in the secondary market. The annual CLL increase requires costly system changes in each of these areas. A decline in the CLL will result in similar systems costs, combined with additional negative costs to mortgage borrowers described above. There would also be additional costs for lenders as they would need to seek alternative “non-GSE” investors for loans that were previously eligible for sale to the Enterprises.

Detrimental Impact on the Housing Missions of the Enterprises, FHA and VA

By their charters, Fannie Mae and Freddie Mac are charged with providing liquidity and stability to the housing market, and, as noted, they are restricted from dealing in mortgages with amounts greater than the CLL. A decline in the CLL would reduce the share of the market that the Enterprises could serve and therefore the number of home buyers that would benefit from lower mortgage rates and other GSE advantages. As noted previously, NAHB estimates that almost one-half million households would be priced out of the conforming loan market if the current CLL were to decline.

Changes in the CLL also impact limits for FHA and VA loans, as the loan limits for these loans are tied to the CLL. The loan limits for FHA-insured single-family mortgages are set on an area-by-area basis and are indexed to the lesser of: 1) 95 percent of the median home price for the area or 2) 87 percent of the CLL, but not less than 48 percent of the CLL.¹³ The VA-guaranty is indexed to 25 percent of the CLL, thus the maximum no-downpayment VA loan is equal to the CLL.

The FHA and VA programs have long served low-and moderate-income home buyers, minorities and first-time home buyers. A decrease in the CLL would also lower FHA and VA limits, and reduce their assistance to those home buyers who are most in need of support. The

¹³ 12 U.S.C. 1709(b)(2). The statute refers to the Freddie Mac limit as determined under section 1454(a)(2) of title 12.

availability of these government programs is especially critical now as borrowers with problematic subprime loans are seeking to refinance into these loan products.

OFHEO's Proposal is Unnecessarily Complicated and Will Result in Market Distortions

In the pre-amble to the Proposed Guidance, OFHEO states that it “has sought to craft procedures that avoid problems in the setting of the limit, that provide an understandable framework for setting the limit and that do not represent significant operational challenges to the mortgage and financial markets.” NAHB believes that the Proposed Guidance fails on each of these counts.

Overview of Proposed Guidance

OFHEO has proposed that declines in the FHFB index should always be deferred one year and should accumulate to a one percent threshold before being incorporated into the CLL on the downside. After deferring the decline in the index for one year:

- (a) If the FHFB index increases, the deferred decline would be netted out in setting the CLL for the next year. However, if the net reduction is less than one percent, the net decline would be carried forward to the next year.

- (b) If the FHFB index decreases again, the latter decline will be deferred one year and the maximum loan limit would be adjusted by the decline of the former year. However, if the net reduction is less than one percent, the previous decline would be rolled forward and not netted from future increases or decreases in the limit until the cumulative declines exceed percent.

The resulting CLL will be rounded downward to the nearest \$100. Loans that were within the conforming loan limit at time of origination will be grandfathered over the remaining term of the loans, regardless of whether the CLL declines to a lower level in subsequent years.

NAHB Comments On Identified Significant Matters

Significant matters on which OFHEO has requested comment include: whether and how the limit should decline, rounding of dollar amounts, deferral of loan limit declines for the later of one year or until they reach at least a cumulative one percent level, and “grandfathering” of qualified conforming loans. Our comments on these matters follow.

Whether and how the limit should decline

First, as we have stated, we do not believe the Proposed Guidance is authorized by current law governing the annual CLL adjustment. Second, any process that results in a decline in the CLL is bad public policy. And, third, the Proposed Guidance is unnecessarily

complicated. The first two points have been amply covered in the preceding sections of this letter.

Regarding the third point, we find OFHEO's proposal to be extremely confusing. Under OFHEO's methodology, housing market participants would need to prepare for an increase or decrease that may or may not occur. As discussed above, this will contribute to uncertainty and instability in the mortgage marketplace. More importantly, it would raise apprehension among borrowers who might delay a home purchase, purchase a lower priced home, or be priced out of the market if the CLL declines. Each of these would have an adverse impact on home prices, the housing market and the economy.

Even the examples OFHEO provided outlining the impact of increases or decreases in the FHFB index in 2007 and 2008 do not provide clarity. In particular, the example in (c)(iii) seems to violate the rule that current year declines are always deferred for a year. In this example, OFHEO states that a decline in the 2008 index would be added to declines from 2006 and 2007 to calculate the 2009 limit. Pursuant to OFHEO's rule, a 2008 decline should be deferred for one year.

Rounding of Dollar Amounts

OFHEO states the proposed rounding down of the CLL to the nearest \$100.00 is "in line with existing practice." A review of past CLLs, shown in Table 2 (attached) indicates that existing practice is to round to nearest the \$50.00. NAHB believes that the existing practice should be continued.

One-Year Deferral of Price Declines and One-Percent Threshold

NAHB understands that OFHEO proposed the one-year deferral of a decrease in the FHFB index to provide market participants time to adjust to a potentially lower limit. While this intent has merit, it does not mitigate the impact of a decline in the index. The deferral process is confusing and the one-percent "safe harbor" will not alleviate the negative impacts of a decline in the CLL. Under OFHEO's proposed methodology, participants would not know with certainty if past declines would be incorporated into the new limit, until such limit is announced. Depending on the size of the price change, the limit could go up, down or stay the same. It may be argued that market participants also have uncertainty about the level of the limit under current procedures, but at least there is an assurance that the limit will not decline.

Under the Proposed Guidance, because a deferred decline is netted against (in the case of increases) or added to (in the case of declines) the current year's October-to-October change in the FHFB price series, market participants will not know whether the limit will go up, down or stay the same until the latest October-to-October change is released, which will be only one month prior to the actual adjustment. So even late in a year, into November, lenders and borrowers won't know if the conforming loan limit is going down on January 1. For example, assume the index in Year 1 shows a 2 percent decline and all previous declines have been netted

out. The limit would be unchanged in Year 2, and the decline deferred to Year 3, depending on what happens to the index in Year 2. The Year 2 result will determine whether the limit in Year 3 will go up, down or remain the same, but that will not be known until the results are released in November of Year 2.

Proposed Grandfathering of Qualified Loans

OFHEO proposes to grandfather loans that were conforming at the time of origination. These loans will continue to be considered as conforming regardless of any future declines in the CLL. NAHB recommends that grandfathering should be tied to date of commitment, rather than date of origination.

Returning to the example above, there clearly would be pipeline vulnerability in the second half of a year as buyers with loan commitments they thought were conforming could become nonconforming if the limit is reduced on the next January 1 and origination has not occurred. Buyers of newly constructed homes would be particularly vulnerable due to the lengthy financing pipeline for new homes and the longer time between loan commitment and origination.

NAHB Recommendation: CLL Should Not Decline Under Any Circumstances

NAHB opposes any CLL adjustment procedure that would result in a decline in the level of the CLL. As discussed, we believe a decrease in the CLL is not allowed under the current statutory authority for adjusting the CLL. Moreover, declines in the CLL would adversely impact the housing and mortgage markets. To ameliorate these concerns, NAHB recommends continuation of the current practice where declines in the FHFB index are netted out from future increases, so that the CLL would never decline from the present level.

In the event that this netting procedure would result in a drop in the CLL, the limit should remain unchanged. The cumulative decline would be rolled forward until such time as the netting does not result in a decline in the limit. This procedure is consistent with current law and practice. More importantly, it provides assurance to home buyers and mortgage market participants that the CLL would never decline from the present level, thus mitigating adverse market impacts.

Conclusion

NAHB strongly opposes the Proposed Guidance or any adjustment procedure that would result in a decline in the conforming loan limit. For the reasons cited above, NAHB urges OFHEO to withdraw the Proposed Guidance. Consistent with current statutory authority and practice, adjustments to the CLL should be based on the annual percent increase in the FHFB index and declines in the index should be netted out from future increases such that the CLL would not drop from the present level.

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Proposed Guidance on Conforming Loan Limit Calculations
July 19, 2007
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Please feel free to contact me or Michelle Hamecs, NAHB's Assistant Staff Vice President for Housing Finance, at 202-266-8425 if you have any questions regarding this letter and NAHB's recommendations.

Sincerely,



David A. Crowe
Senior Staff Vice President
Regulatory and Housing Policy

DAC/mch

cc: The Honorable Barney Frank, Chairman
The Honorable Spencer Bachus, Ranking Member
House Financial Services Committee

The Honorable Christopher Dodd, Chairman
The Honorable Richard Shelby, Ranking Member
Senate Banking Committee

**Table 2
Historical Conventional Loan Limits**

Year	1 Unit	2 Units	3 Units	4 Units	Seconds
1980	93,750	120,000	145,000	180,000	N/A *
1981	98,500	126,000	152,000	189,000	98,500 *
1982	107,000	136,800	165,100	205,300	107,000 *
1983	108,300	138,500	167,200	207,900	108,300 *
1984	114,000	145,800	176,100	218,900	57,000
1985	115,300	147,500	178,200	221,500	57,650
1986	133,250	170,450	205,950	256,000	66,625
1987	153,100	195,850	236,650	294,150	76,550
1988	168,700	215,800	260,800	324,150	84,350
1989	187,600	239,950	290,000	360,450	93,800
1990	187,450	239,750	289,750	360,150	93,725
1991	191,250	244,650	295,650	367,500	95,625
1992	202,300	258,800	312,800	388,800	101,150
1993	203,150	259,850	314,100	390,400	101,575
1994	203,150	259,850	314,100	390,400	101,575
1995	203,150	259,850	314,100	390,400	101,575
1996	207,000	264,750	320,050	397,800	103,500
1997	214,600	274,550	331,850	412,450	107,300
1998	227,150	290,650	351,300	436,600	113,575
1999	240,000	307,100	371,200	461,350	120,000
2000	252,700	323,400	390,900	485,800	126,350
2001	275,000	351,950	425,400	528,700	137,500
2002	300,700	384,900	465,200	578,150	150,350
2003	322,700	413,100	499,300	620,500	161,350
2004	333,700	427,150	516,300	641,650	166,850
2005	359,650	460,400	556,500	691,600	179,825
2006	417,000	533,850	645,300	801,950	208,500
2007	417,000	533,850	645,300	801,950	208,500

Limits for Alaska, Hawaii, Virgin Islands and Guam are 50% higher. Virgin Islands was designated a high cost area in 1992 and Guam in 2001.

* Prior to 1984, second mortgage limits were the same as first mortgage limits. Subsequent legislation reduced the limits to 50% of first mortgage limits. Fannie Mae had no second mortgage program before 1981.

Source: Fannie Mae

Updated: November 28, 2006

ATTACHMENT

2



REGULATORY & HOUSING POLICY AREA

DAVID A. CROWE
Senior Staff Vice President

August 2, 2007

Susan E. Dudley, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

VIA FACSIMILE

Dear Administrator Dudley,

The National Association of Home Builders (NAHB) would like to draw your attention to guidance proposed by the Office of Federal Housing Enterprise Oversight (OFHEO) that does not appear to comply with Executive Order (EO) 12866, as amended by EO 13422. The Proposed Guidance is significant because of legal and policy issues, the rights and obligations of mortgage borrowers and lenders nationwide—including those participating in programs of the Veteran's Administration (VA) and the Federal Housing Administration (FHA)—and because of an unquantified, but spiraling, negative impact on a floundering housing industry. If OFHEO had submitted the Proposed Guidance for review, NAHB believes the Office of Information and Regulatory Affairs (OIRA) would have concluded that the Proposed Guidance is actually a rule that must be issued in compliance with the Administrative Procedure Act (APA).¹ Furthermore, NAHB maintains that OFHEO lacks the legal authority to issue such guidance or rule because Congress has never authorized the lowering of Conforming Loan Limits (CLLs). NAHB requests OIRA to notify OFHEO that the Proposed Guidance has not gone through the necessary process and, therefore, cannot be issued at this time.

NAHB is a federation of more than 850 state and local home builder associations nationwide, encompassing 235,000 members. Our members include individuals and firms engaged in land development, single and multifamily construction, multifamily ownership, building material trades, and commercial and industrial projects. Over 95 percent of our members are classified as small businesses, and our members collectively employ over eight million people nationwide. NAHB members account for 80 percent of the new home construction every year.

¹ 5 USC 501 *et seq.*

Housing is a significant industry— with construction alone contributing approximately 12 percent of Gross Domestic Product—and it depends crucially on the availability of mortgage credit for qualified borrowers. Improper or unauthorized limitations on mortgage credit would reduce the availability of housing while raising its price to the buyer. The resulting fall in new home sales would reduce employment in the industry, exacerbating the current woes of the housing sector and pulling down output and incomes nationwide.

Background

Established by the Federal Housing Enterprise Safety and Soundness Act of 1992, OFHEO is the safety and soundness regulator for Fannie Mae and Freddie Mac (the Enterprises). On June 20, 2007, OFHEO posted on its website a “Proposed Guidance on Conforming Loan Limit Calculations” (Proposed Guidance).² This Proposed Guidance explained the method OFHEO would use to determine each year’s CLL. The calculations are based on survey data (the Monthly Interest Rate Survey or “MIRS” data) supplied by the Federal Housing Finance Board (FHFB), an independent agency within the executive branch.

The Enterprises are restricted under their charters from purchasing mortgages with amounts greater than the CLL. Current law governing the CLL adjustment provides that the limit is adjusted annually by “adding to each such [previous] amount a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Housing Finance Board.” (Emphasis added.)³

NAHB’s objections to the Proposed Guidance are outlined in full in its comments to OFHEO on the Proposed Guidance, which are attached. In this letter, we address what we believe is a lack of statutory authority to implement such a procedure as well as the improper promulgation of the Proposed Guidance.

Current Law Does Not Authorize Declines in the Conforming Loan Limit

Fannie Mae’s and Freddie Mac’s charters—Acts of Congress—require the existence of CLLs: “The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it”, which is followed by detailed instructions about how to change the limits.⁴

The adjustment process for CLLs was delineated by Congress in the Housing and Community Development Act of 1980 (the Act).⁵ A review of the Act and its legislative history verifies that Congress intended that loan limit adjustments only reflect increases in the FHFB

² <http://www.ofheo.gov/media/pdf/confloanlimguidance62007.pdf>, as of July 25, 2007.

³ 12 USC 1717(b)(2) and 12 USC 1454(a)(2).

⁴ Id.

⁵ P.L.96-399.

index. The law does not contemplate declines in the statutory index. Like the Act, the legislative history speaks only of adjusting the maximum allowable limit by adding to the existing limit “a percentage equal to the percentage of increase during the 12-month period ending with the previous October” in the national average home price measured in the FHFB index.⁶ According to the Senate report that accompanied the Act, the adjustment procedure was implemented “to provide the [Enterprises] with the capacity to respond to changing conditions over time”,⁷ by providing for an increase in the limit equal to the percentage increase in the FHFB house price index.

Given that current law only authorizes increases and additions to the CLL, it may be inferred that there is no statutory authority for subtractions from or decreases to the CLL. When the FHFB index has declined, such as in 1993 and 1994, the CLL remained unchanged. An October 1994 GAO report of these occurrences supported keeping the limit unchanged since the current law does not require a decline in the limit when the price index declines.⁸ (These declines were subsequently netted out of future increases in the limit.)

Proposed Guidance Was Improperly Promulgated

The Proposed Guidance Is Improper Because It Does Not Explain Or Clarify A Law Or Regulation.

According to the Executive Office of the President, “guidance” is defined as “an agency statement of general applicability and future effect, other than a regulatory action (as defined in Executive Order 12866, as further amended, section 3(g)), that sets forth a policy on a statutory, regulatory or technical issue or an interpretation of a statutory or regulatory issue.”⁹ As an independent agency within the Department of Housing and Urban Development, OFHEO is an Executive Branch agency; therefore, it is bound by this definition. In its Proposed Guidance, OFHEO makes no reference to any statute or regulation that allows it to set loan limits.

The Proposed Guidance Is A Significant Guidance Document, And It Should Have Been Reviewed By OMB.

As defined by the President in Executive Order 12866, as amended by Executive Order 13422, a Significant Guidance Document is one that may reasonably be anticipated to:

(A) lead to an annual effect of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

⁶ House Conference Report 96-1420, September 26, 1980, to accompany S. 2719.

⁷ Senate Report, No. 96-736, May 15, 1980, to accompany S. 2719.

⁸ “*Implications of Alternative Methods of Adjusting the Conforming Loan Limit*”, U.S. General Accounting Office, October 1994 (GAO/RECD-95-6).

⁹ E.O.12866 §3(g).

- (B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (C) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or
- (D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.¹⁰

The Proposed Guidance may materially alter rights or obligations not only of the Enterprises themselves, but also of all the primary lenders and home mortgage borrowers who are the intended beneficiaries of the Enterprises' charters. These impairments would also extend to mortgage borrowers under other government mortgage programs, like those of VA and FHA, frustrating the purposes of those agencies. The Proposed Guidance also requires analysis of policy issues arising out of legal mandates, because the statutes do not address the consequences of declines in the MIRS survey index.

It is difficult to quantify the precise economic effect of lowering the CLL, but as the NAHB comments to OFHEO illustrate, it could easily exceed \$300,000,000 per year under current conditions. The reason for that effect is that decreasing the CLL makes mortgages that exceed the CLL ineligible for GSE purchase. Loans in excess of the CLL, referred to as non-conforming loans, tend to carry interest rates 25 basis points or more above conforming loans. Therefore, the borrower must pay approximately 25 extra basis points in mortgage interest for a non-conforming loan.

For example, assume the CLL were to decline from the present level of \$417,000. The interest rate on a \$417,000 loan would increase 25 basis points (at least) because the loan would now be ineligible for purchases by the Enterprises. An increase in the interest rate on this loan from 6.25 percent to 6.50 percent would result in a \$70 increase in monthly payment, and the borrower would pay an additional \$24,500 in interest payments over the term of a 30-year fixed rate loan (or \$817 per year).

NAHB estimates that the added interest expense would make that \$417,000 house unaffordable for nearly half a million households who could have afforded it before the CLL decline.¹¹ This increase in the cost of ownership puts pressure on the buyer to seek lower-priced homes, in order to keep monthly payments in line with income. Aggravating this effective fall in demand, the downward pressure on the price will be felt in the market, and the lower prices will decrease the next year's MIRS data even more, leading to another cut in the CLL, which puts more downward pressure on prices, and so on. In short, there is very undesirable feedback from a decrease in the CLL.

A decrease in the CLL also effects limits for FHA and VA loans, as the loan limits for these loans are tied to the CLL. The loan limits for FHA-insured single-family mortgages are set on an area-by-area basis and are indexed to the lesser of: 1) 95 percent of the median home price

¹⁰ E.O.12866 §3(h)(1).

¹¹ Please see p.7 of NAHB comments to OFHEO, attached

for the area or 2) 87 percent of the CLL, but not less than 48 percent of the CLL. The VA-guaranty is indexed to 25 percent of the CLL, thus the maximum no-downpayment VA loan is equal to the CLL. The FHA and VA programs have long served low-and moderate-income home buyers, minorities and first-time home buyers. A decrease in the CLL would also lower FHA and VA limits, and reduce their assistance to those home buyers who are most in need of support.

Therefore, the Proposed Guidance is significant because it satisfies all four criteria of EO 12866: it presents novel legal and policy issues, it materially alters the rights and obligations of the recipients of government housing programs, it frustrates the purpose of those housing programs, and it will have a substantial negative and imploding effect on the economy in general and the housing sector in particular. Because the Proposed Guidance is a Significant Guidance Document, it should have received the review prescribed by Executive Order 12866, and there is no claim or evidence of such review. Therefore, it must be retracted or delayed until it can undergo that review.

The Proposed Guidance Is Actually A Regulation That Must Be Issued In Accordance With The Administrative Procedure Act.

In order to issue regulations, OFHEO must comply with the APA.¹² There can be no dispute that the issuance of the Proposed Guidance does not comply with the requirements for issuing a regulation as set forth in 5 USC 553. As defined by Executive Order 12866,

“Regulation” means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.¹³

The Proposed Guidance sets forth a formula and a declaration of intended future conduct, applicable to both Enterprises, with the force and effect of law. It does announce a rate or a standard; it declares a general formula for determining a rate. Section II(6) of the Proposed Guidance states that purchasing mortgages larger than the loan limit will be considered an unsafe and unsound practice. Thus, the Proposed Guidance is a statement of general applicability and future effect, from which legal consequences will flow. If a GSE purchases a mortgage larger than the CLL, it is engaging in an action defined by OFHEO as an unsafe and unsound practice, triggering a number of administrative sanctions.

The Proposed Guidance is binding, and it substantially broadens the underlying rules, especially Parts 1710, 1720, and 1777 of Title 12, CFR. The courts also have recognized that this kind of “guidance” is actually a rule that must comply with the APA.¹⁴ Therefore, the

¹² 12 USC 4526(b), 5 USC 553.

¹³ E.O.12866 §3(e).

¹⁴ *Appalachian Power Co. v. E.P.A.*, 208 F.3d 1015, C.A.D.C., 2000.

Proposed Guidance is an illegal rulemaking. It must be withdrawn, and any resubmission must comply with 5 USC 553.

Conclusion

OFHEO is acting outside its authority, both procedurally and substantively. OFHEO did not notify OIRA of the Proposed Guidance, nor submit it for review, despite the clear language of EO 13422 requiring it to do so, especially in light of the effect on the economy and other government programs and the lack of legal authority for decreases in the CLL. Review of this Proposed Guidance would have shown that actually it is a proposed rule that needs to conform to the APA. Furthermore, had these procedural steps been followed, it would have been clear that OFHEO is without substantive authority to do what it is trying to do.

NAHB respectfully requests OIRA to notify OFHEO and the Secretary of Housing and Urban Development that OFHEO is in violation of EO 12866 as amended by EO 13422. Once the Proposed Guidance is subjected to OIRA's scrutiny, NAHB is confident that our objections will be evident, and the guidance will be seen as unauthorized. At the very least, OFHEO should issue this rule forthrightly as a rule. The notice and comment procedures of the APA will shed enough light on the proposal to reveal its legal insufficiencies.

If you have any questions or would like any further information, please feel free to contact me or NAHB's Regulatory Counsel, AJ Holliday, at 202-266-8305, aholliday@nahb.com. Thank you for your attention to this matter.

Respectfully,



David A. Crowe
Senior Staff Vice President
Regulatory and Housing Policy

DAC/ajh
Attachment