MORTGAGE BANKERS ASSOCIATION
Investing in communities

May 18, 2007

Alfred Pollard, Esquire
General Counsel
Patrick J. Lawler
Associate Director & Chief Economist
Office of Federal Housing Enterprise Oversight
1700 G Street, NW
Washington, DC 20552 VIA Electronic Mail

Dear Mr. Pollard and Mr. Lawler:

On behalf of the Mortgage Bankers Association[1] (MBA), I would like to thank you for giving our staff and members the opportunity to discuss with you how the Office of Federal Housing Oversight (OFHEO) might implement the annual calculation of the Fannie Mae and Freddie Mac (GSE or GSEs) conforming loan limit, assuming a decline in house prices. As we explained to you at our meeting, we strongly believe that reductions in house prices should not result in a reduction in the GSE loan limits. Instead, we believe that for purposes of arriving at the limits, any decrease in house prices should be recorded and netted against any future increases.

We arrived at this conclusion for several reasons. First, we do not believe the GSEs' charters currently provide clear authority to decrease the conforming loan limits. Second, a downward adjustment to the ceiling would result in significant costs to the industry and to borrowers; a delayed implementation approach also would have adverse consequences. Third, in today's market environment, decreases in the GSE loan ceiling send the wrong message and are not worth their costs considering the availability of a workable alternative.

We greatly appreciate your consideration of our views and we hope you will find our approach to calculating the limits, in the event of a house price decline, acceptable. If, however, you choose to go forward with a policy contemplating downward adjustments in the limits, we respectfully request that you allow the public to comment prior to taking such action.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 500,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 3,000 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

<u>Background</u>

The GSEs are required under their charters to establish limits on the original principal obligation of conventional mortgages which they purchase up to a maximum conforming loan limit set by statute[2] and subject to an annual adjustment. The adjustment is made by "*adding* to each such [prior] amount"[3] (emphasis added) a percentage equal to the percentage yearly <u>increase</u> as of the end of October in the national average single family home price as reflected in data surveyed by the Federal Housing Finance Board (FHFB).

Until 2004, the GSEs announced their loan limits following an annual announcement by the FHFB of the maximum limits based on a national house price survey pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act.[4] Early in 2004, OFHEO released letters to the GSEs and announced Supervisory Guidance to govern future adjustments to the conforming loan limit.[5] OFHEO decided that, for future years, it would calculate and announce the conforming loan limit.

OFHEO noted in the Supervisory Guidance, there have been only three occasions when the average house price declined from October to October (1990, 1994 and 1995).[6] In 1990, the GSEs lowered the conforming loan limit by $150, and in the other two years the conforming loan limit stayed the same. Thus, there is a precedent for the GSEs' lowering the conforming loan limit on a <u>voluntary</u> basis and for not lowering the conforming loan limit as well.

I. The GSEs' Charters Do Not Provide Clear Authority to Decrease the Conforming Loan Limits

As indicated, the GSEs Charters provide that adjustments in the conforming loan limits are to be made by "*adding* to each such amount … a percentage thereof equal to the percentage *increase* during the twelve-month period ending with the previous monthly survey of all mortgage lenders conducted by the Federal Housing Finance Board." The Charters also indicate that the limitations "may be *increased* by not to exceed 50 per centum with respect to properties located in Alaska, Guam, Hawaii and the Virgin Islands." (Emphasis added.)[7]

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[2] 12 U.S.C. 1717(b)(2) and 12 U.S.C. 1454(a)(2).
[3] Ibid.
[4] 12 USC 4501 *et seq*.
[5] See letters, dated February 20, 2004 from Armando Falcon, Jr., Director of OFHEO, to Franklin D. Raines, Chairman and CEO of Fannie Mae, and to Richard F. Syron, Chairman and CEO of Freddie Mac, and Supervisory Guidance, SG-04-001, "Conforming Loan Limit Calculations," also dated February 20, 2004.
[6] Supervisory Guidance, Section 3.
[7] See 12 U.S.C. 1717(b)(2) and 12 U.S.C. 1454 (a)(2).

Considering that the charters authorize additions and increases to the limits but make no mention of the possibility of subtractions from or decreases to the limits, we do not believe the statute provides clear authority for such actions.[8] Notably, H.R. 1427, which is to be voted on by the House of Representatives soon, would specifically confer on the new GSE regulator the authority to adjust the conforming loan limit upward or downward. Pending such clarification, however, we believe the limits can be increased but not decreased.

II. Decreases in the Loan Ceiling Would Result in Significant Costs to the Industry and to Borrowers. Delayed Implementation, Suggested by OFHEO, Also Has Potential Adverse Consequences.

MBA member companies of all sizes report that the annual increase in the GSE conforming loan limits requires systems changes throughout their companies. Every department from loan origination and secondary marketing to servicing and quality assurance is affected. However, increases have no adverse impact on existing loan commitments.

Decreases to the limits, on the other hand, would present all of the costly effects of increases along with significant adverse business implications and potentially negative results for consumers, including those with loan commitments for new home construction and those seeking to refinance. Many consumers purchasing new homes arrange for mortgages at the conforming loan limit based on their house prices up to a year in advance of closing. Refinance borrowers tend to seek conforming loans at the loan limits. Downward adjustments in the limits will harm these borrowers in the pipeline and render many unqualified for a GSE mortgage.

A determination by OFHEO in early November that the conforming loan ceiling must be decreased by several thousand dollars by January of the following year will mean that lenders must find an alternative execution outlet for many borrowers' loan commitments made under the assumption that they would qualify for GSE execution. Alternative executions would almost certainly be either less profitable for the lender or more costly for the consumer.

You also asked for our members' opinions on delayed implementation of a decrease. You indicated that a year's delay in the implementation of a decrease could give the lending community some time to adjust expectations. You indicated that OFHEO would not impose the decrease after the year's delay if prices had gone up on a net basis during the interval.

[8] Generally, under the principle of statutory construction *Expressio unius est exclusio alterius* the express mention of one thing excludes all others.

While delaying a decrease is preferable to no accommodation at all, such an approach would still not overcome our concerns and would present new ones. In the first instance, that approach would involve a decrease which we do not believe is authorized. Secondly, such an approach will require lenders and brokers of all sizes to track and prepare to implement a change that may or may never actually be implemented. Lenders still would have to estimate what a lowered ceiling might be and also would be bound to price the contingency into their overhead, increasing costs to consumers. Borrowers at the margins ultimately may not qualify for lower-cost GSE mortgages.

III. In Today's Market Environment, Decreases in the GSE Loan Ceiling Send the Wrong Message and Are Not Worthwhile.

Currently, the mortgage market is in a correction phase as it adjusts to a slower level of home price appreciation and, in some local markets, even a decrease in home prices. As some borrowers attempt to move to new mortgages in order to avoid interest rate increases on their adjustable-rate mortgages, the resources of the GSEs are vital.

The GSE loan ceiling is a number that is closely watched in the mortgage industry. We do not think at this time that bringing that number down would be helpful in stabilizing the current mortgage market. In fact, we believe that bringing down the conforming loan ceiling could, in itself, confirm fears that housing values are down in all markets, which is not the case.

You have expressed to us some concern that failure to decrease the conforming loan ceiling could result in a disproportionately high GSE loan ceiling compared with the actual cost of housing. An extended period of years of declining housing values would be unprecedented historically. Moreover, considering the disruptions that such a change in the hundreds or even thousands of dollars might bring, the utility of the decrease is not evident but its effects would be substantial.

IV. MBA Proposal for Adjustment to the Loan Ceiling

MBA supports an approach utilizing the following steps for adjustment to the loan ceiling: a) review the FHFB data and make the calculation of the amount of increase or decrease there has been in house prices for the prior year, b) in the event of an increase, check for any prior decrease(s) to net against the increase and announce and implement any net increase, c) in the event of a decrease, record the amount of the decrease for netting against future increases, and leave the conforming loan ceiling unchanged. We would be glad to supply examples of the function of this method using various assumptions if you would find it helpful.

The advantage to this method is that it avoids industry and borrower adverse consequences while allowing for the ceiling to reflect downward fluctuations in housing prices.

V. Conclusion

For the reasons we have cited above, MBA requests that OFHEO adopt an approach to the maximum loan limit adjustment that is consistent with the GSE charters and allows for the maximum benefit of GSE funding for the industry and for consumers. We strongly believe that such an approach would involve netting any decreases in house prices against increases to adjust the limits. If OFHEO is considering an approach that could result in decreases to the loan limits, we recommend that OFHEO submit its proposal for public comment.

Any questions regarding this letter should be referred to Kathy Gibbons at (202) 557-2870 or kgibbons@mortgagebankers.org or to Ken Markison at (202) 557-2930 or kmarkison@mortgagebankers.org.

Most sincerely,

Jonathan L. Kempner
President & Chief Executive Officer