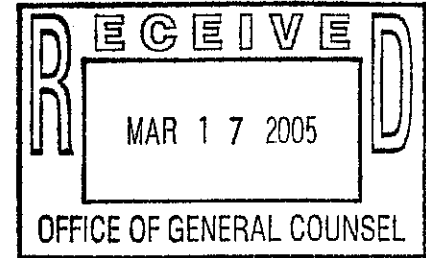




U.S. Department of Housing and Urban Development
Office of Inspector General
 451 7th St., SW
 Washington, DC 20410

March 9, 2005



Alfred M. Pollard, General Counsel
 Attention: Comments/RIN 2550-AA31
 Office of Federal Housing Enterprise Oversight
 Fourth Floor, 1700 G Street, N.W.
 Washington, DC 20552

Re: Proposed Rule: Mortgage Fraud Reporting

Dear Mr. Pollard:

This relates to your February 25, 2005 notice of a proposed rule that will add a new part 1731 to title 12 of the Code of Federal Regulations. The proposed rule will require the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (jointly referred to as the Enterprises) to advise in writing the Director of Office of Federal Housing Enterprise Oversight (OFHEO) of "mortgage fraud or possible mortgage fraud" and the "report shall describe the mortgage fraud or possible mortgage fraud in detail." The proposed rule defines "mortgage fraud" as:

[A] material misstatement, misrepresentation, or omission relied upon by [Fannie Mae or Freddie Mac] to fund or purchase . . . a mortgage, mortgage backed security, or similar financial instrument. Such mortgage fraud includes, but is not limited to, identification and employment documents, mortgagee or mortgagor identity, and appraisals that are fraudulent.

The proposed rule and its preamble, however, are silent regarding what OFHEO plans to do with these reports, or the responsibility of the Enterprises to make similar reports to law enforcement authorities. In fact, section 1731.4 expressly allows the Enterprises to make disclosures to law enforcement authorities only "pursuant to legal requirement." Moreover, the fifth footnote of the preamble states that OFHEO staff "would be prohibited from disclosing any report without the prior written approval of the Director," and there is no express law enforcement disclosure exception included in this footnote. This causes the Department of Housing and Urban Development Office of Inspector General (OIG) grave concern.

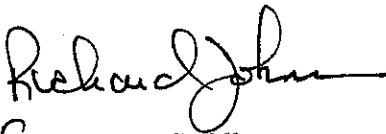
The definition of "mortgage fraud" included in the proposed rule could very well amount to violations of various Federal criminal laws (e.g., 18 U.S.C. §§ 371, 1001, 1010, 1012, 1014, 1028, 1341, 1343, and/or 1344). Further, I am not aware that OFHEO's authority includes the investigation of allegations of Federal criminal law violations. On the other hand, at a minimum with respect to Federal Housing Administration-insured mortgages and mortgages backing securities guaranteed by the Government National Mortgage Association, OIG has plenary investigative authority over reported mortgage frauds. Further, as you are aware, the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635, at section 2635.101(b)(11), requires Federal employees to report fraud to appropriate authorities.

Accordingly, I recommend that the final rule reflect that OFHEO will promptly transmit to OIG all mortgage fraud reports that include allegations relating to Federal Housing Administration-insured mortgages or mortgages backing securities guaranteed by the Government National Mortgage Association. This is also in furtherance of the OIG's statutory responsibility to ensure efficiency in Department programs and offices, and specifically to prevent fraud, waste, and abuse in the Department's mortgage programs.

I also believe, section 1731.4(c) *Nondisclosure*, or a separate subsection, must not only allow, but require, the Enterprises to forward the report provided to OFHEO to the appropriate Federal law enforcement authorities. This addresses an ambiguity in section 1731.4(c) that allows the Enterprises to notify law enforcement authorities pursuant to a legal requirement, but fails to indicate whether such a requirement exists. Additionally, reporting these matters to Federal law enforcement authorities is not only the most efficient and proper way to immediately address allegations of fraud or possible fraud, it also avoids any potential lack of communication in the review process that could prove embarrassing in the future.

Thank you in advance for your consideration of this comment.

Sincerely,



for Bryan Saddler

Counsel to the Inspector General