

OFHEO

Policy Guidance

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Subject: Examination of Mortgage Fraud Programs

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

I. PURPOSE AND SCOPE.

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

b. Evaluation of risk and reporting. The examination of mortgage fraud programs of the Enterprises must include an evaluation of the extent to which internal policies, procedures, and training programs of an Enterprise minimize risks from mortgage fraud and to the extent that mortgage fraud or possible mortgage fraud is consistently reported to OFHEO.

c. Revocation. This Guidance revokes and supersedes Policy Guidance PG-05-003.

II. STATEMENT OF POLICY.

Mortgage fraud has an impact on the safe and sound operations of the Enterprises. The Enterprises must have systems in place reasonably designed to detect, investigate, and report mortgage fraud or possible mortgage fraud and must have internal policies, procedures and training programs.

III. REFERENCES.

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.

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 Section V 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 single-family or multi-family 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, 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. REPORTABLE MORTGAGE FRAUD OR POSSIBLE MORTGAGE FRAUD.

An Enterprise must report mortgage fraud or possible mortgage fraud for a single loan or a series of loans, following the procedures under Section VI, below, when it identifies or is notified about such mortgage fraud or possible mortgage fraud by law enforcement or other government authority. Situations where an Enterprise must report mortgage fraud or possible mortgage fraud include where it:

a. **Repurchase.** Requires the repurchase of or declines to purchase a mortgage, including a mortgage associated with a mortgage backed security or similar instrument issued or guaranteed by the Enterprise, or requires or declines to require another make-whole arrangement or other remedy because the Enterprise has identified mortgage fraud or possible mortgage fraud;

b. **Insider fraud.** Identifies that a board member, officer, employee, or contractor engaged by the Enterprise has or may have engaged in mortgage fraud or possible mortgage fraud;

- c. Institutional fraud.** Identifies institutional (seller/servicer) mortgage fraud, including, but not limited to lack of collateral, theft of custodial funds, non-remittance of pay-off, or multiple delivery of the same mortgage loan;
- d. Law enforcement notification.** 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;
- e. Pattern.** Identifies a pattern of related conduct or behavior that is interpreted as mortgage fraud or possible mortgage fraud;
- f. Reputation risk.** Identifies that there is a substantial likelihood that the mortgage fraud or possible mortgage fraud will receive significant public exposure, publicity, or reputation risk; or
- g. Significant impact.** Identifies that mortgage fraud or possible mortgage fraud that is serious or significant to the Enterprise or may have a significant impact on the safe and sound operations of the Enterprise.

VI. REPORTING AND NOTIFICATION PROCEDURES.

a. Immediate notification.

An Enterprise must immediately notify the EIC, by telephone or electronic communication (in addition to submitting an MFR under paragraph VI.b.), when it:

1. Insider fraud. Identifies that a board member, officer, employee, or contractor engaged by the Enterprise has or may have engaged in mortgage fraud or possible mortgage fraud;
2. Law enforcement notification. 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;
3. Reputation risk. Identifies that there is a substantial likelihood that the mortgage fraud or possible mortgage fraud will receive significant public exposure, publicity, or reputation risk; or,
4. Significant impact. Identifies that mortgage fraud or possible mortgage fraud that is otherwise serious or significant to the Enterprise or may have a significant impact on the safe and sound operations of the Enterprise.

b. Submission of a Mortgage Fraud Report (MFR).

1. Format and electronic submission.

A. *General format.* An Enterprise shall report mortgage fraud or possible mortgage fraud to the EIC on an MFR. The format of the MFR should comply with the technical specifications set forth by the Financial Crimes Enforcement Network for the Suspicious Activity Report for Financial Institutions.

B. *Other format.* 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.

C. *Electronic submission.* The MFR must be sent electronically through a secure method, as determined by the EIC, unless otherwise directed by the EIC.

2. Timeframe for submission.

A. *General.* An Enterprise must promptly submit an MFR after it identifies or is notified by authorities of the mortgage fraud or possible mortgage fraud, but not more than 30 calendar days after such identification or notification under Section V.

3. Supplemental information. The MFR must be used to report supplemental information that is either identified by the Enterprise or requested by the EIC, unless the EIC requests that the information be submitted in a different format.

4. Corrections. The MFR must be used to report corrections to the initial MFR, unless the EIC requests the correction be submitted in a different format.

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

c. Quarterly Status Report.

1. Format and timeframe. Within 10 business days after the end of each calendar quarter, each Enterprise must submit to the EIC, in electronic form, a report of the status of cases in which the Enterprise has submitted a MFR pursuant to Section V (b) – (g) submitted in the preceding quarter as well as existing active cases reportable under Section V (b) through (g) in the inventory as of the first day of the quarter.

2. Contents and status.

A. *Contents.* For each case the Quarterly Status Report must contain, at a minimum:

- i. Case number and case name (as reported by the Enterprise on the MFR);
- ii. Type(s) of mortgage fraud or possible mortgage fraud;
- iii. Estimated number of loans involved, if more than one;
- iv. Estimated total unpaid balance of loan(s);
- v. State(s) in which properties securing the loans are located; and
- vi. Status of the case.

B. *Status.* The status of each case should indicate if the case is “under continued investigation” or “closed.”

C. *Closed cases.* After a case is reported as closed, it should be removed from subsequent Quarterly Status Reports. If the case is closed, all of the reason(s) for the closure should be identified and action(s) taken should be identified. Such reasons and actions include:

- i. Investigation closed. Lack of evidence of fraud or possible fraud.
- ii. Investigation closed. Case referred to law enforcement.
- iii. Investigation closed. Case referred to licensing, regulatory, or other government agency.
- iv. Investigation closed. Appropriate protective measures were taken.
- v. Investigation closed. Appropriate parties terminated or suspended as approved party.
- vi. Other resolution or action.

d. Retention of records.

An Enterprise must retain a copy of each MFR 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 MFR was submitted. All supporting documentation must be made available to OFHEO and other appropriate law enforcement or other governmental authorities upon request.

e. No disclosure of submission of an MFR or Quarterly Status Report; Notification of law enforcement and other third parties.

The Enterprise or its board members, officers, employees, or agents who submit an MFR, or Quarterly Status Report may not disclose that a submission has been made 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 (including licensing or regulatory agencies) 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.

f. No waiver of privilege.

An Enterprise does not waive any privilege it may claim under law by submitting an MFR or Quarterly Status Report.

VII. INTERNAL CONTROLS AND PROCEDURES; TRAINING.

a. General.

An Enterprise shall establish adequate and efficient internal controls and procedures and training to ensure effective systems to detect, investigate, and report mortgage fraud or possible mortgage fraud.

b. Controls and procedures.

An Enterprise's mortgage fraud and possible mortgage fraud detection, investigation, and reporting systems should include, at a minimum, the following types of controls and procedures:

1. Mortgage fraud officer. Designated management official with overall responsibility for the mortgage fraud and possible mortgage fraud detection, investigation, reporting, and training;
2. Central reporting point. A central point to report mortgage fraud;
3. Central repositories. Central repositories for mortgage fraud information;
4. Continued business. Specification of conditions under which and the extent to which the Enterprise may continue to engage in business with an individual or entity suspected of mortgage fraud and designation of mortgage fraud officer(s) or senior management officer(s) to approve any continued business with such individual or entity.

5. Internal publication. Internal publication of the mortgage fraud reporting procedures and mortgage 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 controls and procedures as requested by the EIC.

c. Training.

1. General. The training program of an Enterprise must be designed to ensure that employees of the Enterprise 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 directed by the EIC.

VIII. BOARD OF DIRECTOR OVERSIGHT AND CONFORMANCE REPORT.

a. Oversight.

The Board of Directors of an Enterprise, or a committee of the Board, shall cause the Enterprise to conduct a review of the mortgage fraud detection, investigation, reporting, and training policies at least annually, and shall document its consideration of the results of that review in the minutes of the Board or Board committee.

b. Conformance report.

The Board of Directors, or a committee of the Board, shall cause the Enterprise to submit to the EIC an annual report describing the conformance of the practices of the Enterprise with this Guidance. The submission date, format, and content shall be directed by the EIC. At a minimum, the report shall include a summary of the Enterprise plans, policies,

and procedures that have been developed; other actions taken by the Enterprise to comply with the provisions of this Guidance; and matters requiring attention as identified by the EIC.

IX. Supervisory Action.

a. 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.

b. 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 in 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.