



August 17, 2009

Alfred M. Pollard
General Counsel
Attention: Comments/RIN 2590-AA11
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552

RE: Reporting of Fraudulent Financial Instruments
Notice of proposed rulemaking; request for comments
RIN 2590-AA11

Dear Mr. Pollard:

Fannie Mae appreciates the opportunity to comment on the Federal Housing Finance Agency's ("FHFA") proposed regulation on reporting of fraudulent financial instruments ("Proposed Regulation"). As set forth below, this comment letter addresses two issues: (1) Fannie Mae requests that FHFA clarify the scope of the Proposed Regulation as it applies to Fannie Mae and Freddie Mac (the "Enterprises"); and (2) Fannie Mae requests that FHFA clarify the definition of fraud.

Background

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the "1992 Act") gave to the Office of Federal Housing Enterprise Oversight ("OFHEO") the responsibility for ensuring that Fannie Mae and Freddie Mac (the "Enterprises") were operating safely, in compliance with applicable laws. In furtherance of its supervisory responsibilities, OFHEO issued a regulation in 2005, requiring the Enterprises to report on possible or actual mortgage fraud.¹ Instructions for reporting were set forth in OFHEO guidance, and Fannie Mae instituted procedures, pursuant to OFHEO's regulation and guidance, to capture and report information on mortgage fraud or possible mortgage fraud, as those terms were defined in the regulation.

The Federal Housing Finance Regulatory Reform Act of 2008 (the "2008 Act") established FHFA as the successor to OFHEO and assigned the new agency supervisory responsibility for the 12 Federal Home Loan Banks (the "Banks") as well as the Enterprises. The Proposed Regulation would implement section 1379E of the 2008 Act, which directs FHFA to require all the regulated entities -- the Banks as well as the

¹ 12 C.F.R. part 1731

Enterprises -- to report the purchase or sale of a fraudulent loan or financial instrument, or possible fraud relating to the purchase or sale of a loan or financial instrument.

Scope of the Proposed Regulation

In the preamble to the Proposed Regulation, FHFA specifically requests comments on whether it would be appropriate to include in the final rule provisions relating to the differences between the Banks and the Enterprises. Because the Enterprises are currently subject to, and complying with, a fraud reporting requirement, Fannie Mae believes that it would be appropriate to distinguish between the rule's intended applicability to the Banks and the Enterprises.

The initial fraud reporting rule and OFHEO's guidance were issued in 2005; since that time, working closely with OFHEO and FHFA, Fannie Mae has implemented extensive processes to comply with the rule and guidance and has enhanced those processes as the rule and guidance have been modified. These efforts were supported by a significant expenditure of time and resources, and resulted in an effective means of identifying mortgage fraud in connection with the Fannie Mae's purchases and sales. However, there is no such requirement currently applicable to the Banks.

Although section 1379E of the 2008 Act appears to broaden the reporting requirement for all regulated entities, Fannie Mae understands that the Proposed Regulation is not intended to require the Enterprises to change their reporting practices. Rather, the purpose of the Proposed Regulation is to initiate a fraud reporting process for the Banks. Because the Proposed Regulation as currently drafted does not make this clear, Fannie Mae requests a clarification in the final rule.

Definition of Fraud

The Proposed Regulation defines fraud as "a material misstatement, misrepresentation, or omission relied upon by a regulated entity,"² without indication that the term is intended to apply only to intentional deceptions and not to inadvertent mistakes. By contrast, the definition of mortgage fraud in the OFHEO regulation included, by way of example, certain intentional activities that were the focus of the regulation, including "a material misstatement, misrepresentation, or omission in identification and employment documents, mortgagee or mortgagor identity, and appraisals that are fraudulent."³ OFHEO also commented in the preamble to its final rule that fraud, under well established definitions, includes the concept that the material misstatement, misrepresentation or omission be knowingly or intentionally made.⁴ Fannie Mae believes that similar clarification by FHFA in the final rule would be appropriate.

² 27 Fed. Reg. 28636, 28637 (June 17, 2009).

³ *Id.* § 1731.2(c).

⁴ 70 Fed. Reg. 43625, 43626 (July 28, 2005).

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Conclusion

Thank you for the opportunity to comment and for your consideration of these views. Please contact the undersigned at (202) 752-7932 should you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Miriam Smolen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Miriam Smolen
Associate General Counsel

cc: Timothy J. Mayopoulos
Julie E. Katzman

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