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BY ELECTRONIC MAIL AND COURIER

Mr. Andrew Varrieur
Chief Information Officer
Office of Federal Housing Enterprise Oversight
1700 G Street, N.W.
Washington, D.C. 20052

Re: Comments on Proposed Information Quality Guidelines

Dear Mr. Varrieur:

Fannie Mae appreciates the opportunity to comment on the Office of Federal Housing Enterprise Oversight's (OFHEO) proposed Information Quality guidelines (OFHEO Proposal). The proposed guidelines, posted on OFHEO's website, and referenced at 67 Fed. Reg. 15580 (April 2, 2002), implement a directive from the Office of Management and Budget (OMB) that all Federal agencies adopt guidelines "ensuring and maximizing the quality, objectivity, utility and integrity" of information disseminated to the public. OMB's Information Quality Guidelines (OMB Final Guidelines) were effective on January 3, 2002. See 67 Fed. Reg. 8452 (February 22, 2002).

Importantly, the OFHEO proposed guidelines and the OMB guidelines are mandated by section 515 of the Treasury and General Appropriations Act of 2001 (P.L. 106-554).

Fannie Mae strongly supports the objectives underlying OFHEO's proposed guidelines. As the regulator of two of the most important participants in the U.S. housing finance market, OFHEO has an obligation both to the entities it oversees and to the public to disseminate information that is objective, accurate, unbiased, reliable, and useful.

In developing final guidelines, we urge OFHEO to consider not only Fannie Mae's comments on the instant proposal, but to also consult with other appropriate Federal agencies as to the comments received in response to their proposals.¹

Our more detailed comments are discussed below.

¹ See U.S. Chamber of Commerce "Data Quality Alert," April 24, 2002 (encouraging Chamber members to submit comments to relevant Federal agencies).

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OMB Requirements

OMB's guidelines are currently binding on OFHEO. The guidelines provide both *policy* and *procedural* guidance to Federal agencies. In the Preamble to its January 3, 2002 release, OMB states that it "designed the guidelines to help agencies ensure and maximize the quality, utility, objectivity and integrity of the information that they disseminate.... It is crucial that the information Federal agencies disseminate meets these guidelines." OMB Final Guidelines at 2. OMB also designed the guidelines to ensure that "agencies will meet basic information quality standards. Given the administrative mechanisms required by section 515 as well as the standards set forth in the Paperwork Reduction Act, it is clear that agencies should not disseminate information that does not meet a basic level of quality..... The more important the information, the higher the quality standards to which it should be held, for example, in those situations involving 'influential scientific, financial, or statistical information...'" *Id.* at 3.

The OMB Final Guidelines recognize that ensuring quality of data will necessarily vary from agency to agency, but reiterate that "the essence of the guidelines will apply. That is, the agencies must make their methods transparent by providing documentation, ensure quality by reviewing the underlying methods used in developing data and consulting (as appropriate) with experts and users, and keep users informed about corrections and revisions." OMB Final Guidelines at 3-4. The OMB Final Guidelines find that the "objectivity" requirement is met if the disseminated information is presented in an accurate, clear, complete, and unbiased manner and, as a matter of substance, is accurate, reliable, and unbiased. Technical information that has been subjected to formal, independent, external peer review is presumptively "objective." *Id.* at 6.

The OMB guidelines "apply stricter quality standards to the dissemination of information that is considered 'influential.'" OMB Final Guidelines at 8. Scientific, financial, or statistical information is "influential" when "the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions." OMB clearly states that "[t]he intent of the new phrase 'clear and substantial' is to reduce the need for speculation on the part of agencies." *Id.*

Although not an "official" position as yet, several agency staff members have expressed the view that agency actions taken under the Information Quality guidelines would be judicially reviewable.²

OFHEO Guidelines

Fannie Mae supports OFHEO's objectives of ensuring data quality. However, OFHEO's proposed guidelines do not comply with OMB's policy and procedural directives in several material areas.

² See "Executive Branch Officials Opine that Denials of Data Quality Act Petitions are Judicially Reviewable," posted on TheCRE.com (providing a summary of National Academy of Science Data Quality Workshop, March 21, 2002)

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Fannie Mae respectfully urges OFHEO to further review its guidelines in comparison with OMB's Final Guidelines and comments received by other appropriate agencies, and revise its proposal accordingly.

Covered "Information." First, OFHEO asserts that the agency disseminates "very little" information that is subject to the Information Quality statute. OFHEO Proposal at 2. While Fannie Mae agrees that confidential and proprietary information collected by OFHEO during the examination process or in connection with capital reports cannot be disseminated to the public under various statutory and regulatory provisions, the OMB Final Guidelines are very clear that "the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections." OMB Final Guidelines at 10. However, OFHEO disseminates public information that does not reveal proprietary or confidential information collected from Fannie Mae and Freddie Mac. We therefore disagree that "very little" information produced by OFHEO is subject to the Information Quality law and OMB's Final Guidelines. Determinations as to coverage under OMB's Final Guidelines must be made on a case-by-case basis whenever information is disseminated by OFHEO.

Clear examples of covered information, in addition to the Housing Price Index (HPI) referenced in OFHEO's Proposal, include OFHEO's minimum capital calculations. The risk-based capital calculations that OFHEO will disseminate when the risk-based capital rule becomes enforceable would also be covered. Under OMB's Final Guidelines, these analytical results must be reviewed by OFHEO for data quality before public dissemination to ensure that they are placed in context, are accurate, unbiased, reliable, serve public utility and are objective.³

In addition, OFHEO has and will publish various studies prepared by agency staff. For example, the "working paper series" recently announced by OFHEO (see OFHEO Press Release dated March 6, 2002) provides an illustrative example of how OMB Final Guidelines must be consulted on a case-by-case basis to determine applicability. The OFHEO press release states that these papers do not "necessarily represent policies or positions of the Office of Federal Housing Enterprise Oversight..." Under the OMB Final Guidelines and OFHEO's Proposal, in order to avoid coverage under Information Quality standards as a technical matter, those papers must make absolutely clear that any such papers express the opinions of the author only and do not represent fact or the agency's view.⁴ A statement that the paper does not "necessarily" reflect the views of OFHEO does not meet the OMB Final Guidelines. Therefore, the statement in the Preamble to the OFHEO

³ The Director of OFHEO has announced his intent to make public results of risk-based capital calculations before the risk-based capital rule is enforceable. Such results, if released, would be subject to OMB's Final Guidelines and the Congressional intent underlying the Information Quality statute. This is true notwithstanding the fact that OFHEO's final guidelines implementing the OMB Final Guidelines will not become effective as a technical matter until October 2002. Therefore, if released, these results must be placed in context, must be reliable, must be accurate, must meet the utility requirement and must be unbiased.

⁴ While papers prepared by OFHEO staff that reflect opinion only may escape technical coverage under the Information Quality law, Fannie Mae strongly urges OFHEO to apply basic data quality procedures to such materials given the degree of likelihood that the public could misconstrue such papers as official OFHEO documents.

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Proposal that the proposed guidelines "do not apply to staff working papers that are preliminary in nature and do not represent the views of the agency" is not accurate as a legal matter. It is also at odds with OFHEO's proposed definition of "information." The only materials exempted from the definition of "information" are those that clearly are "opinions, where the agency's presentation makes it clear that what is being offered is someone's opinion, rather than fact or the agency's view." OFHEO's discussion of this issue must be clarified in the agency's final guidelines. In addition, Fannie Mae respectfully suggests that OFHEO adopt a uniform and clear legend that appears on all working papers indicating that the papers represent opinion only and are therefore not covered by information quality requirements.

OFHEO has also solicited public comment on systemic risk issues. See 65 Fed. Reg. 64711 (October 30, 2000). To the extent that this study and others like it are made public, they will be subject to OMB's Final Guidelines as well as OFHEO's guidelines that implement the policy and procedural directives contained in the OMB document. These papers must therefore be placed in context, must provide clear supporting data for conclusions, identify public utility,⁵ must include any assumptions, and identify any areas of weakness among other requirements. To be presumptively "objective" OFHEO papers must be subjected to formal, external and independent peer review.

"Influential" Information. As noted above, the OMB Final Guidelines specifically require agencies to provide a higher level of data quality scrutiny to "influential scientific, financial, or statistical" information. OFHEO's proposed guidelines cite only the HPI as an example of "influential" information disseminated by the agency. Our comment with respect to information covered by the guidelines as a threshold matter also applies here. Before dissemination, OFHEO must make case-by-case determinations as to whether information is "influential" and thus subject to higher standards of data quality. At a minimum, capital rules and calculations and issuance of a systemic risk study "have a clear and substantial impact on important public policies or important private sector decisions." This is because these types of information will affect the way the Fannie Mae and Freddie Mac do business to ensure capital compliance (thus affecting important private sector decisions) and potentially influence Congress and the Administration (important public policy). Inaccurate or flawed information in these areas can have a serious impact on both the companies and on financial markets.⁶ Therefore, OFHEO's final guidelines must provide for a case-by-case determination as to whether information it disseminates is "influential" under the OMB Final Guidelines. We would note that due to the important nature of OFHEO's regulatory mission and

⁵ With respect to systemic risk, it is unclear what public utility a study would serve since it is already OFHEO's mission to ensure that Fannie Mae and Freddie Mac are operating safely.

⁶ In fact, OFHEO itself noted the potential adverse impacts that inaccurate capital calculations could have on the markets in its amended risk-based capital rule: "Given the fact that the Enterprises are publicly-traded companies, the economic condition of which could be affected greatly by premature disclosure of capital requirements, OFHEO will not disclose capital numbers until the Enterprises have had a reasonable opportunity to make at least a large portion of these adjustments and present to the public their plans to maintain capital compliance." 67 Fed. Reg. 11859 (March 15, 2002).

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the role its regulatees play in the housing market that a substantial amount of information disseminated by OFHEO can be interpreted to meet the definition of "influential" information.

Further, the OFHEO proposal does not contain any procedures for review of information subject to the higher standards of data quality. OFHEO must adopt such procedures to enable it to identify which information is subject to the higher standard and how the agency will meet its obligation to apply a higher standard of data quality with respect to those items. OFHEO cannot discharge this responsibility by simply assigning responsibility for heightened data quality to an originating Assistant Director's office. ("Agencies shall adopt specific standards of quality that are appropriate for the various categories of information they disseminate." OMB Final Guidelines at 14). Clearly articulated standards must be developed and applied uniformly throughout the agency for both basic data quality and for quality of "influential" information.

In addition, OFHEO's final guidelines with respect to "influential" information must include standards to ensure a high degree of transparency about data and methods to facilitate reproducibility. In the event that confidentiality concerns prevent public dissemination of all of the data, the results of such studies need not be reproducible under the OMB Final Guidelines as long as they are subject to "especially rigorous robustness checks." OFHEO's proposal does not contain clear procedures for undertaking such checks for robustness.

Responsibility for Administration. As OFHEO's proposed guidelines recognize, it is ultimately the responsibility of the Director to ensure data quality. According to OFHEO's proposed guidelines "the Chief Information Officer of OFHEO serves as the agency official charged with overseeing compliance with OMB guidelines for the quality of information...." OFHEO Proposal at 2. However, the proposed guidelines also appear to delegate the responsibility of the Director to the Assistant Directors of OFHEO. Further, the OFHEO Proposal refers to OFHEO Guideline No. 109, "Policy and Procedures for Release of Information in OFHEO Publications," which involves the Office of General Counsel and the Office of External Affairs. As currently drafted, the proposal is confusing as to the responsibilities of each division of OFHEO with respect to data quality. The final guidelines must clearly define responsible parties and the procedures they will use to ensure data quality. As compliance with law is generally the function of the General Counsel of an organization, Fannie Mae suggests that OFHEO's General Counsel be vested with primary responsibility for compliance with OMB's Final Guidelines. While it may be true that the General Counsel will need to rely on the assurances of agency employees as to the accuracy of technical information, the determination of whether or not information quality procedures are appropriate and have been properly executed under the guidelines will be a legal judgment.

Technical. In OFHEO's proposed statement of policy regarding Information Quality, OFHEO pledges to "undertake to ensure that the information it disseminates to the public is objective (accurate, clear, complete, and unbiased), useful and has integrity." This appears to propose a "best efforts" standard. In contrast, the OMB Final Guidelines require that each Federal agency "issue their own guidelines *ensuring and maximizing* the quality, objectivity, utility, and integrity of

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information...." OMB Final Guidelines at 14 (emphasis added). OFHEO's final guidelines should be revised accordingly.

* * *

We applaud OFHEO's commitment to ensuring data quality and appreciate this opportunity to comment on the agency's proposed guidelines. We are available at your convenience to discuss our comments further.

Sincerely,



Patricia A. Milon
Vice President and Deputy General Counsel

cc: Alfred Pollard, Esq.



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