

## Federal Housing Enterprise Oversight

## § 1703.8

(h) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(i) *Person* means any individual, or any agency, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein, but does not include OFHEO or any employee.

(j) *Record* means any document, regardless of form or format, which is created or obtained by OFHEO and which is under OFHEO control at the time of an FOIA request.

(k) *Requester* means any person seeking access to OFHEO records under the FOIA.

[63 FR 71005, Dec. 23, 1998, as amended at 65 FR 55171, Sept. 13, 2000]

### Subpart B—Documents and Information Generally

#### § 1703.6 General rule.

Except as authorized by this part or as otherwise necessary in performing official duties, no employee shall in any manner disclose or permit disclosure of any document or information in the possession of OFHEO that is confidential or otherwise of a nonpublic nature, including that regarding OFHEO or the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).

#### § 1703.7 Applicability.

(a) *General.* The FOIA and the regulations in this part apply to all OFHEO documents and information. However, if another law sets specific procedure for disclosure, OFHEO will process a request in accordance with the procedures that apply to those specific documents. If a request is received for disclosure of a document to the public which is not required to be released under those provisions, OFHEO will consider the request under the FOIA and the regulations in this part.

(b) *The relationship between the FOIA and the Privacy Act of 1974.* The Privacy Act of 1974 (Privacy Act), 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a

system of records as defined in the Privacy Act. Requests from individuals for records about themselves which are contained in an OFHEO system of records will be processed under the provisions of the Privacy Act as well as the FOIA. OFHEO will not deny access by a first party to a record under the FOIA or the Privacy Act unless the record is not available to that individual under both the Privacy Act and the FOIA.

(c) *Records available through routine distribution procedures.* When the record requested includes material published and offered for sale, e.g., by the Superintendent of Documents or the Government Printing Office, or which is available to the public through an established distribution system (such as that of the National Technical Information Service of the Department of Commerce), or material offered on OFHEO's web site (<http://www.ofheo.gov>), OFHEO will first refer the requester to those sources. Nevertheless, if the requester is not satisfied with the alternative sources, OFHEO will process the request under the FOIA.

[63 FR 71005, Dec. 23, 1998, as amended at 65 FR 55171, Sept. 13, 2000]

#### § 1703.8 OFHEO examination reports.

(a) *General.* Reports of examinations prepared by OFHEO may be disclosed only in accordance with this part or with the prior written consent of the Director. No person, agency, or authority, or director, officer, employee, or agent thereof, shall disclose any such report or information contained therein in any manner except as authorized in accordance with this subpart. The report of examination is the property of OFHEO and any unauthorized use or disclosure of such report may be subject to the penalties provided in 18 U.S.C. 641.

(b) *Enterprises.* The Director makes available to each Enterprise a copy of OFHEO's report of examination of such Enterprise. The report of examination is the property of OFHEO and is provided to the Enterprise for its confidential use only. Under no circumstance shall the Enterprise or any director, officer, employee, or agent thereof, make public or disclose in any manner the

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report of examination or any portion of the contents thereof to any person or organization not officially connected with the Enterprise as director, officer, employee, attorney, auditor, or independent auditor. Any other disclosure or use of this report except as expressly permitted by the Director may be subject to the penalties of 18 U.S.C. 641.

(c) *Government agencies.* The Director may make available reports of examination for the confidential use of Federal agencies responsible for investigating or enforcing applicable Federal laws.

### § 1703.9 Orders and agreements available to the public.

(a) *General.* OFHEO shall make the following documents available to the public:

(1) Any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest.

(2) Any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under 12 U.S.C. 4631 through 4641 that has become final in accordance with 12 U.S.C. 4633 and 12 U.S.C. 4634.

(3) Any modification to or termination of any final order made public pursuant to this section.

(b) *Delay of public disclosure under exceptional circumstances.* If the Director makes a determination in writing that the public disclosure of any final order pursuant to paragraph (a) of this section would seriously threaten the financial health or security of the Enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(c) *Documents filed under seal in public enforcement hearings.* The Director may file any document or part thereof under seal in any hearing commenced by the Director if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(d) *Retention of documents.* The Director shall keep and maintain a record, for not less than 6 years, of all docu-

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ments described in paragraph (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceedings initiated by the Director under 12 U.S.C. 4631 through 4641.

(e) *Disclosure to Congress.* This section may not be construed to authorize the withholding of any information from, or to prohibit the disclosure of any information to, the Congress or any committee or subcommittee thereof.

### Subpart C—Availability of Records of OFHEO

#### § 1703.11 Official records of OFHEO.

(a) OFHEO shall, upon a written request for records that reasonably describes the information or records and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person for inspection and/or copying, except as provided in paragraph (b) of this section. OFHEO may charge a fee determined in accordance with subpart D of this part. OFHEO will make the record available in the form or format requested if the record is readily reproducible in that form or format with reasonable effort. "Readily reproducible" means, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk, tape, or other electronic medium using equipment currently in use by OFHEO.

(b) *Records not available.* Except as otherwise provided in this part, or as may be specifically authorized by the Director, the following information and records, or portions thereof, are not available to requesters:

(1) Any record, or portion thereof, that is—

(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and

(ii) Is in fact properly classified pursuant to such Executive order.

(2) Any record, or portion thereof, related solely to the internal personnel rules and practices of OFHEO.