



**OFFICE OF INSPECTOR GENERAL**

Federal Housing Finance Agency

400 7th Street, S.W., Washington DC 20024

February 28, 2013

**TO:** Jon Greenlee, Deputy Director, Division of Enterprise Regulation

*George Grob*

**FROM:** George Grob, Deputy Inspector General for Evaluations

**SUBJECT:** Close Out Memorandum - Evaluation Survey Report 2013-002

The purpose of this memorandum is to report the results of OIG's evaluation of FHFA's oversight of the Enterprises' public statements. For purposes of this evaluation, public statements include: speeches, interviews, press releases, congressional testimony, and the Enterprises' websites.

OIG initiated this evaluation after the Securities and Exchange Commission (SEC) charged six former Fannie Mae and Freddie Mac executives with securities fraud, alleging they knew of and approved misleading pre-conservatorship disclosures regarding Fannie Mae's and Freddie Mac's holdings of high-risk mortgages. However, misleading and potentially harmful public statements are not limited to those connected with the Enterprises' holdings and SEC filings, but also include matters relating to proposed legislation, regulations, governmental policies, image building, and other topics.

**FINDINGS**

Prior to FHFA issuing written guidelines, FHFA and the Enterprises had developed a custom and practice regarding FHFA's review of draft public statements. Pursuant to this custom and practice, FHFA and the Enterprises understood that the Enterprises were prohibited from issuing certain categories of public statements.

Nevertheless, written guidelines were needed to formalize the custom and practice and to enhance the Enterprises' compliance with FHFA's principles regarding public statements. On November 15, 2012, the FHFA Acting Director issued external communication standards for the Enterprises. These standards address many concerns that OIG considered during its field work. The standards set specific guidelines for a variety of public statements, clarify FHFA's role in

the review process, and mandate that the Enterprises maintain appropriate internal policies and procedures. FHFA also committed to re-evaluating the standards after six months.

## **CONCLUSION**

FHFA's recently announced communication standards for the Enterprises address many of the concerns that led to the initiation of this evaluation. For that reason, OIG is discontinuing for now any further work on FHFA's oversight of public statements. However, OIG will monitor FHFA's implementation of the guidelines and initiate additional work on this topic if necessary.

This study was conducted by David P. Bloch, Director, Division of Mortgage, Investments, and Risk Analysis, and Charlie Divine, Investigative Counsel. OIG appreciates the cooperation of FHFA and Enterprise staff, as well as the assistance of all those who contributed to the preparation of this report.

Attachment: Evaluation Survey Report 2013-002, FHFA's Oversight of Public Statements

Copy to: Rick Hornsby, Chief Operating Officer  
Jeffrey Spohn, Senior Associate Director, Office of Conservatorship Operations  
Bruce Crandlemire, Senior Advisor

**ATTACHMENT**

**Evaluation Survey Report No. 2013-002**

**FHFA's Oversight of Public Statements**

**Federal Housing Finance Agency  
Office of Inspector General**

**February 28, 2013**

# FHFA's Oversight of Public Statements

## Purpose

This report closes the Federal Housing Finance Agency (FHFA) Office of Inspector General's (OIG's) evaluation of FHFA's oversight of certain disclosures by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). Specifically, this report addresses FHFA's review of the Enterprises' "public statements."<sup>1</sup> For purposes of this report, public statements include: speeches, interviews, press releases, congressional testimony, and the Enterprises' websites.

## Background

### Introduction

OIG initiated this evaluation after the Securities and Exchange Commission (SEC) charged six former Fannie Mae and Freddie Mac executives with securities fraud, alleging they knew of and approved misleading pre-conservatorship statements regarding Fannie Mae's and Freddie Mac's holdings of high-risk mortgages. Among the alleged misleading statements cited in the SEC's complaints are statements made by former Fannie Mae and Freddie Mac executives during media interviews, investor and analyst calls, congressional testimony, investor conferences, and speeches. Given the role of the Enterprises in the financial crisis, the significance of the misleading statements alleged by the SEC is manifest.

Even after the advent of the conservatorships, the Enterprises' public statements continue to be the subject of significant interest and scrutiny. The multitude of Enterprise-related headlines underscores the risks, especially reputational risk, associated with unsatisfactory public statements. Public statements by the Enterprises concerning proposed legislation, regulations, strategic plans, policies, and statements made for the purposes of public image building all could potentially impact the Enterprises, FHFA, or the public.

### The Gradual Emergence of Communications Policies

FHFA finalized a written communication standard for the Enterprises in November 2012. During the more than four years of conservatorship that preceded the written standards, FHFA declined to provide the Enterprises written instructions regarding public statements. Still, the Enterprises were not without guidance: after the advent of the conservatorships, FHFA and the Enterprises gradually developed a practice for reviewing draft public statements. The arrangement that emerged reflected an understanding regarding communications FHFA prohibited and the kind of draft public statements FHFA expected to review prior to publication by the Enterprises.

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<sup>1</sup> FHFA's oversight of the Enterprises' public statements falls under FHFA's broad conservatorship authority. FHFA's exercise of conservatorship authority has been a focus of OIG's work. *See, e.g.,* OIG, *FHFA's Conservator Approval Process for Fannie Mae and Freddie Mac Business Decisions* (AUD-2012-008) (Sept. 27, 2012).

According to Enterprise officials, FHFA identified three basic types of prohibited statements: (1) communications regarding the Enterprises' future; (2) political communications or activities; and (3) actions or communications that could constitute lobbying of government entities. Agency officials confirmed, when interviewed, that the Enterprises have generally abstained from engaging in these categories of prohibited communications.

The arrangement among the Enterprises and FHFA also involved the Enterprises submitting certain kinds of communications to FHFA for review prior to public dissemination. Although neither FHFA nor the Enterprises had ever specifically enumerated the categories of public statements that should be submitted for review, the parties developed a fairly consistent understanding. Generally, the Enterprises adhered to the practice of submitting all significant public statements to FHFA for pre-publication review.

The success of FHFA's and the Enterprises' understanding hinged on the Enterprises' internal communications departments acting as gatekeepers. As gatekeepers, the communications departments screened nearly all draft statements prepared by the Enterprises and their employees. Only after public statements were approved by internal communications officials would those officials forward select drafts to FHFA for review. Generally, the internal communications departments forwarded FHFA draft public statements that they characterized as groundbreaking, sensitive, important, or that they believed had the potential to surprise FHFA.

FHFA officials reported some disappointments with public statements made by the Enterprises about pending policies just after the beginning of the conservatorships. However, both Agency and Enterprise officials interviewed were generally satisfied that, by the time OIG initiated this evaluation, the Enterprises were for the most part forwarding appropriate communications for review.

### **The Potential Benefits of Written Guidelines**

Despite FHFA's and the Enterprises' general comfort with the unwritten arrangement that developed over time, OIG concluded, during the evaluation process, that written guidelines would have several advantages.

First and foremost, written guidelines would more effectively ensure compliance and make FHFA and the Enterprises less dependent on individuals experienced with the parties' custom and practice. The success of the Agency's and the Enterprises' arrangement was contingent on the consistent expectations of the FHFA and Enterprise officials who have been working together. However, departures of key individuals at FHFA and within the Enterprises could undermine the practice that developed. Moreover, departures by key staff are not uncommon in the post-conservatorship era. For example, none of Fannie Mae's current senior executives were in their positions at the time the conservatorship commenced.

Second, written guidelines would likely increase uniformity between the Enterprises. OIG found that the absence of written guidelines combined with FHFA's reliance on self-selection by the Enterprises resulted in Freddie Mac forwarding a significantly larger number of public

statements than Fannie Mae. These divergent practices may indicate an inconsistent interpretation regarding the nature of oversight by FHFA.

Third, written guidelines could also potentially improve efficiency, making compliance easier because FHFA and Enterprise employees could rely on bright-line rules and not memories of past decisions by the Agency.

Fourth, in addition to refining and improving the policies that emerged, written guidelines could reinforce FHFA's past guidance and thus promote a culture of compliance within the Enterprises.

Finally, the absence of written FHFA guidelines, combined with FHFA's limited record keeping regarding past decisions, meant that FHFA could not reference past decisions or conduct any audits or reviews. Written guidelines would provide FHFA the opportunity to conduct an after-the-fact audit of Enterprise communications, if the Agency decided to embark on such an endeavor.

### **FHFA's External Communication Standards for Enterprises in Conservatorship**

OIG learned during the evaluation that FHFA was considering a draft directive regarding external communications, including guidelines for the Enterprises. According to FHFA officials, the draft directive was initially prepared in November 2009.

OIG received a version of the draft directive in March 2012 and discussed it with several interviewees. On November 15, 2012, the FHFA Acting Director signed a revised version of the directive entitled "External Communication Standards for Enterprises in Conservatorship" (Standards). The Standards address many of OIG's concerns outlined above. Further, the final version improves the March 2012 draft by further delineating the categories of prohibited communications and providing additional details regarding communications that should be submitted to FHFA for review.

The new Standards emphasize "the Enterprises['] responsibility to have robust governance and clearance processes for external communication, regardless of the need to seek FHFA decision or input." The Standards also make clear that "FHFA expects the Enterprises to have written policies and procedures that articulate both appropriate external communications and the clearance processes required." In issuing the Standards, FHFA stated that it will re-evaluate them following a six-month assessment process.

## **Findings**

1. Prior to FHFA issuing written guidelines, FHFA and the Enterprises developed a custom and practice regarding FHFA's review of draft public statements. Within this context, FHFA and the Enterprises understood that the Enterprises were prohibited from making certain categories of public statements and that they were required to seek FHFA's pre-publication review of other public statements.

2. Nevertheless, written guidelines were needed to formalize the custom and practice and enhance the Enterprises' compliance with FHFA's principles regarding public statements. Written guidelines would likely also have a number of potential benefits, including: reducing the dependency on experienced individuals, creating uniformity between the Enterprises, improving efficiency, promoting a culture of compliance, and providing FHFA the opportunity to evaluate the Enterprises' compliance after the fact.
3. On November 15, 2012, the FHFA Acting Director issued "External Communication Standards for Enterprises in Conservatorship," which address many of OIG's concerns regarding public statements.
4. The Standards set specific guidelines for a variety of public statements, clarify FHFA's role in the review process, and mandate the Enterprises maintain internal policies and procedures. The Standards also commit FHFA to a re-evaluation after six months.

## **Conclusion**

The newly issued Standards address the concerns that led to the initiation of this evaluation. Therefore, for now, OIG is discontinuing any further work on FHFA's oversight of public statements. However, OIG will monitor FHFA's implementation of the Standards and initiate additional work on this topic if necessary.

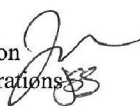
## Appendix A – FHFA’s Response to Findings and Recommendation



### Federal Housing Finance Agency

#### MEMORANDUM

TO: George Grob, Deputy Inspector General for Evaluations

FROM: Jon D. Greenlee, Deputy Director, Division of Enterprise Regulation  
Jeffrey Spohn, Senior Associate Director for Conservatorship Operations 

SUBJECT: Evaluation Survey Report Entitled, Evaluation Survey Report, FHFA’s Oversight of Public Statements (Assignment No. Sur-2011-027)

DATE: February 7, 2013

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This memorandum transmits the Federal Housing Finance Agency’s (FHFA) management response to the OIG’s evaluation survey report. The report presents the results of OIG’s evaluation survey regarding FHFA’s Oversight of Public Statements and contains no recommendations.

FHFA acknowledges and appreciates the work performed by OIG in this important area. FHFA will continue to monitor implementation of the external communication standards for the Enterprises issued on November 15, 2012 by the FHFA Acting Director, as well as the Enterprises’ issuance of formal securities documents broadly.

cc: Edward DeMarco, Acting Director  
Richard Hornsby, Chief Operating Officer  
Bruce Crandlemire, Senior Advisor for IG Operations  
John Major, Internal Controls and Audit Follow-Up Manager



## Appendix B – Objective, Scope, and Methodology

The purpose of this evaluation was to assess the adequacy of FHFA’s oversight of public statements made by Fannie Mae and Freddie Mac employees. For purposes of this evaluation, public statements include: speeches, interviews, press releases, congressional testimony, and the Enterprises’ websites.

OIG analyzed FHFA’s and the Enterprises’ available policies and procedures regarding public statements. OIG also interviewed FHFA officials with knowledge of the Agency’s internal policies, procedures, and practices, as well as Freddie Mac and Fannie Mae employees with knowledge of the Enterprises’ policies and procedures. In addition, OIG interviewed Enterprise employees who participated in communications with FHFA regarding the Agency’s review of public statements. During the interviews, OIG asked questions regarding:

- The extent to which FHFA provided the Enterprises guidelines for submitting public statements for review;
- FHFA’s and the Enterprises’ custom and practice with respect to submitting draft communications for review;
- Subject matters FHFA prohibited the Enterprises from addressing in public statements;
- The Enterprises’ internal policies and procedures regarding public statements and the individuals responsible for coordinating draft communications with FHFA; and
- FHFA’s internal policies and procedures regarding receipt of draft communications, standards applied by the Agency, and FHFA’s record keeping.

The preparation of this evaluation report was conducted under the authority of the Inspector General Act and in accordance with the *Quality Standards for Inspection and Evaluation* (January 2012), which were promulgated by the Council of the Inspectors General on Integrity and Efficiency. These standards require OIG to plan and perform evaluations that, among other things, result in evidence sufficient to provide a reasonable basis for findings and conclusions. OIG believes that the findings and conclusions contained in this report meet these standards.

OIG provided FHFA with an opportunity to respond to a draft of this report. FHFA’s comments on the report are reprinted in their entirety in Appendix A.

## **Additional Information and Copies**

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