

## § 1731.5

(1) Disclosing or reporting such fraud pursuant to legal requirements, including reporting to appropriate law enforcement or other governmental authorities; or

(2) 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.

(d) *Acceptance of other forms.* The Director may, upon written notice to each Enterprise, accept reports of mortgage fraud or possible mortgage fraud in formats promulgated by any Federal agency that has jurisdiction over the reporting of mortgage fraud or possible mortgage fraud by the Enterprises.

(e) *No waiver of privilege.* An Enterprise does not waive any privilege it may claim under law by reporting mortgage fraud or possible mortgage fraud under this part.

### § 1731.5 Internal controls, procedures, and training.

An Enterprise shall establish adequate and efficient internal controls and procedures and an operational training program to assure an effective system to detect and report mortgage fraud or possible mortgage fraud under this part.

### § 1731.6 Supervisory action.

Failure by an Enterprise to comply with §§ 1731.3, 1731.4, and 1731.5 may subject the Enterprise or the board members, officers, or employees thereof to supervisory action by OFHEO under the Federal Housing Enterprises Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), including but not limited to, cease-and-desist proceedings and civil money penalties.

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AUTHORITY: 12 U.S.C. 4513(a), 4513(b)(1), 4513(b)(5), 4514, 4631, 4632, and 4632.

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### Subpart A—General

#### § 1732.1 Purpose and scope.

In furtherance of the safety and soundness authorities of OFHEO, this part sets forth minimum requirements in connection with the record retention program of each Enterprise. The requirements are intended to ensure that complete and accurate records of an Enterprise are readily accessible by OFHEO for examination and other supervisory purposes. Such access shall be by reasonable means, consistent with the nature and availability of the records and existing information technology.

#### § 1732.2 Definitions.

For purposes of this part, the term:

(a) *Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the Housing and Community Development Act of 1992, Public Law 102-550, section 1301, Oct. 28, 1992, 106 Stat. 3672, 3941 through 4012 (1993) (12 U.S.C. 4501 *et seq.*).

(b) *Active record* means a record that is necessary to conduct the current business of an office or business unit of an Enterprise and, therefore, is readily available for consultation and reference.

(c) *Director* means the Director of OFHEO, or his or her designee.

(d) *Electronic record* means a record created, generated, communicated, or stored by electronic means.

(e) *Employee* means any officer or employee of an Enterprise or any conservator appointed by OFHEO.

(f) *Enterprise* means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term “Enterprises”

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means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(g) *E-mail* means electronic mail, which is a method of communication in which:

(1) Usually, text is transmitted (but sometimes also graphics and/or audio information);

(2) Operations include sending, storing, processing, and receiving information;

(3) Users are allowed to communicate under specified conditions; and

(4) Messages are held in storage until called for by the addressee, including any attachment of separate electronic files.

(h) *Inactive record* means a record that is seldom used but must be retained by an Enterprise for fiscal, legal, historical, or vital records purposes.

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

(j) *Record* means any information whether generated internally or received from outside sources by an Enterprise or employee maintained in connection with Enterprise business, regardless of the following:

(1) Form or format, including hard copy documents (*e.g.*, files, logs, and reports) and electronic documents (*e.g.*, e-mail, databases, spreadsheets, PowerPoint presentations, electronic reporting systems, electronic tapes and back-up tapes, optical discs, CD-ROMS, and DVDs), and voicemail records;

(2) Where the information is stored or located, including network servers, desktop or laptop computers and handheld computers, other wireless devices with text messaging capabilities, and on-site or off-site at a storage facility;

(3) Whether the information is maintained or used on Enterprise-owned equipment, or personal or home computer systems of an employee; or

(4) Whether the information is active or inactive.

(k) *Record retention schedule* means a schedule that details the categories of records an Enterprise is required to retain and the corresponding retention periods. The record retention schedule includes all media, such as microfilm

and machine-readable computer records, for each record category. Reproductions are also included for each record category if the original of the official record is not available.

(l) *Retention period* means the length of time that records must be kept before they are destroyed. Records not authorized for destruction have a retention period of “permanent.”

(m) *Vital records* means records that are needed to meet operational responsibilities of an Enterprise under emergency or disaster conditions (emergency operating records) or to protect the legal and financial rights of an Enterprise. Emergency operating records are the type of vital records essential to the continued functioning or reconstitution of an Enterprise during and after an emergency. A vital record may be both an emergency operating record and a legal and financial rights record.

### §§ 1732.3–1732.4 [Reserved]

## Subpart B—Record Retention Program

### § 1732.5 Establishment and evaluation of record retention program.

(a) *Establishment*. An Enterprise shall establish and maintain a written record retention program and provide a copy of such program to the OFHEO Examiner-in-Charge of the Enterprise within 120 days of the effective date of this part, and annually thereafter, and whenever a significant revision to the program has been made.

(b) *Evaluation*. Management of the Enterprise shall evaluate in writing the adequacy and effectiveness of the record retention program at least every three years and provide a copy of the evaluation to the board of directors and the OFHEO Examiner-in-Charge of the Enterprise.

### § 1732.6 Minimum requirements of record retention program.

(a) *Requirements*. The record retention program established and maintained by an Enterprise under § 1732.5 shall:

(1) Be reasonably designed to assure that retained records are complete and accurate;