

## Federal Housing Finance Agency

## § 1215.3

(5) Protect sensitive, confidential information and FHFA's deliberative processes.

(c) By providing these policies and procedures, FHFA does not waive the sovereign immunity of the United States.

(d) This part provides guidance for FHFA's internal operations. This part does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

(e) The production of records, information, or testimony pursuant to this part, does not constitute a waiver by FHFA of any privilege.

### § 1215.2 Applicability.

(a) This regulation applies to demands or requests for records, information, or testimony, in legal proceedings in which FHFA is not a named party.

(b) This regulation does not apply to:

(1) Demands or requests for an FHFA employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of FHFA;

(2) Requests for the release of non-exempt records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; or

(3) Congressional demands or requests for records or testimony.

### § 1215.3 Definitions.

As used in this part:

*Confidential supervisory information* means information prepared or received by FHFA that meets all of the following criteria:

(1) The information is not a document prepared by a regulated entity or the Office of Finance for its own business purposes that is in its possession;

(2) The information is exempt from the Freedom of Information Act, 5 U.S.C. 552 (1966); and

(3) The information:

(i) Consists of reports of examination, inspection and visitation, confidential operating and condition reports, and any information derived from, related to, or contained in such reports, or

(ii) Is gathered by FHFA in the course of any investigation, suspicious activity report, cease-and-desist order,

civil money penalty enforcement order, suspension, removal or prohibition order, or other supervisory or enforcement orders or actions taken under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, 12 U.S.C. 4501 *et seq.*

(4) The inclusion of the term "confidential" within the definition of "confidential supervisory information" is not intended to invoke the meaning of "confidential," as that term is used in Executive Order No. 13526, December 29, 2009 (75 FR 707 (Jan. 5, 2010) (President's order on the classification of National Security Information). Confidential supervisory information is used in part 1215 to refer to the distinct category of information defined in § 1215.3. FHFA used the word "confidential" within the label for this category of information simply to be consistent with the manner in which federal banking agencies refer to similar or identical types of information.

*Demand* means a subpoena, or an order or other command of a court or other competent authority, for the production of records, information, or testimony that is issued in a legal proceeding.

*Employee* means:

(1) Any current or former officer or employee of FHFA or of FHFA-OIG;

(2) Any other individual hired through contractual agreement by or on behalf of FHFA who has performed or is performing services under such an agreement for FHFA; and

(3) Any individual who has served or is serving in any consulting or advisory capacity to FHFA, whether formal or informal.

*Federal Home Loan Bank* means a bank established under the authority of 12 U.S.C. 1423(a).

*FHFA* means the Federal Housing Finance Agency including the FHFA-OIG.

*FHFA Counsel* means an attorney in FHFA's Office of General Counsel.

*General Counsel* means FHFA's General Counsel or a person within FHFA's Office of General Counsel to whom the General Counsel has delegated responsibilities under this part.

*Legal proceeding* means any matter before a court of law, administrative

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board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

*Produce* means provide, disclose, expose, or grant access to.

*Records or information* means, regardless of the person or entity in possession:

(1) All documents and materials that are FHFA agency records under the Freedom of Information Act, 5 U.S.C. 552;

(2) All other documents and materials contained in FHFA files; and

(3) All other information or materials acquired by an FHFA employee in the performance of his or her official duties or because of his or her official status, including confidential supervisory information.

*Regulated entity* has the same meaning as set forth in 12 U.S.C. 4502(20). For this regulation's purposes, "regulated entity" also includes:

(1) The Office of Finance; and

(2) Any current or former director, officer, employee, contractor or agent of a regulated entity.

*Request* means any informal request, by whatever method, in connection with a legal proceeding, seeking production of records, information, or testimony that has not been ordered by a court or other competent authority.

*Testimony* means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, and recorded interviews made by an individual about FHFA information in connection with a legal proceeding.

#### § 1215.4 General prohibition.

(a) No employee may produce records or information, or provide any testimony related to the records or information, in response to any demand or request without prior written approval to do so from the Director or the Director's designee.

(b) Any person or entity that fails to comply with this part may be subject to the penalties provided in 18 U.S.C. 641 and other applicable laws. A current employee also may be subject to

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administrative or disciplinary proceedings.

#### § 1215.5 Delegation.

To the extent permissible by statute, the Director may delegate his or her authority under this part to any FHFA employee and the General Counsel may delegate his or her authority under this part to any FHFA Counsel.

#### § 1215.6 Factors FHFA may consider.

The Director may grant an employee permission to testify regarding agency matters, and to produce records and information, in response to a demand or request. Among the relevant factors that the Director may consider in making this determination are whether:

(a) This part's purposes are met;

(b) FHFA has an interest in the decision that may be rendered in the legal proceeding;

(c) Approving the demand or request would assist or hinder FHFA in performing statutory duties or use FHFA resources;

(d) Production might assist or hinder employees in doing their work;

(e) The records, information, or testimony can be obtained from other sources. (Concerning testimony, "other sources" means a non-agency employee, or an agency employee other than the employee named).

(f) The demand or request is unduly burdensome or otherwise inappropriate under the rules of discovery or procedure governing the case or matter in which the demand or request arose;

(g) Production of the records, information, or testimony might violate or be inconsistent with a statute, Executive Order, regulation, or other legal authority;

(h) Production of the records, information, or testimony might reveal confidential or privileged information, trade secrets, or confidential commercial or financial information;

(i) Production of the records, information, or testimony might impede or interfere with an ongoing law enforcement investigation or proceedings, or compromise constitutional rights;

(j) Production of the records, information, or testimony might result in FHFA appearing to favor one litigant over another;