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Subpart B—Enterprises

AUTHORITY: 12 U.S.C. 4513b, 4526, 4613, 4614, 4615, 4616, 4617.

SOURCE: 76 FR 35733, June 20, 2011, unless otherwise noted.

§ 1229.13 Definitions.

For purposes of this subpart:

Capital distribution means—

(1) Any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an Enterprise, except a dividend consisting only of shares of the Enterprise;

(2) Any payment made by an Enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit made to finance an acquisition by the Enterprise of such shares or other ownership interests, except to the extent the Enterprise makes a payment to repurchase its shares for the purpose of fulfilling an obligation of the Enterprise under an employee stock ownership plan that is qualified under the Internal Revenue Code of 1986 (26 U.S.C. 401 et seq.) or any substantially equivalent plan as determined by the Director of FHFA in writing in advance; and

(3) Any payment of any claim, whether or not reduced to judgment, liquidated or unliquidated, fixed, contingent, matured or unmatured, disputed or undisputed, legal, equitable, secured or unsecured, arising from rescission of a purchase or sale of an equity security of an Enterprise or for damages arising from the purchase, sale, or retention of such a security.

PART 1230—EXECUTIVE COMPENSATION

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AUTHORITY: 12 U.S.C. 1427, 1431(1)(5), 1452(h), 1455(1)(5), 4502(6), 4502(12), 4513, 4514, 4517, 4518,

12 CFR Ch. XII (1–1–14 Edition)

4518a, 4526, 4631, 4632, 4636, 1719(g)(5), and 1723a(d).

SOURCE: 78 FR 28450, May 14, 2013, unless otherwise noted.

§ 1230.1 Purpose.

The purpose of this part is to implement requirements relating to the supervisory authority of FHFA under the Safety and Soundness Act with respect to compensation provided by the regulated entities and the Office of Finance to their executive officers. This part also establishes a structured process for submission of relevant information by the regulated entities and the Office of Finance, in order to facilitate and enhance the efficiency of FHFA’s oversight of executive compensation.

§ 1230.2 Definitions.

The following definitions apply to the terms used in this part:

Charter acts mean the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, which are codified at 12 U.S.C. 1716 through 1723i and 12 U.S.C. 1451 through 1459, respectively.

Compensation means any payment of money or the provision of any other thing of current or potential value in connection with employment. Compensation includes all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any executive officer, including, but not limited to, payments and benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, post-employment benefit or other compensatory arrangement.

Director means the Director of FHFA, or his or her designee.

Enterprise means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, Enterprises) and, except as provided by the Director, any affiliate thereof.

Executive officer means:

(1) With respect to an Enterprise:

(i) The chairman of the board of directors, chief executive officer, chief financial officer, chief operating officer,

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president, vice chairman, any executive vice president, any senior vice president, any individual in charge of a principal business unit, division, or function, and any individual who performs functions similar to such positions whether or not the individual has an official title; and

(ii) Any other officer as identified by the Director;

(2) With respect to a Bank:

(i) The president, the chief financial officer, and the three other most highly compensated officers; and

(ii) Any other officer as identified by the Director.

(3) With respect to the Office of Finance:

(i) The chief executive officer, chief financial officer, and chief operating officer; and

(ii) Any other officer identified by the Director.

Federal Home Loan Bank or *Bank* means a bank established under the Federal Home Loan Bank Act; the term “Federal Home Loan Banks” or “Banks” means, collectively, all the Federal Home Loan Banks.

FHFA means the Federal Housing Finance Agency.

Office of Finance means the Office of Finance of the Federal Home Loan Bank System (or any successor thereto).

Reasonable and comparable means compensation that is:

(1) *Reasonable*—compensation, taken in whole or in part, that would be appropriate for the position and based on a review of relevant factors including, but not limited to:

(i) The duties and responsibilities of the position;

(ii) Compensation factors that indicate added or diminished risks, constraints, or aids in carrying out the responsibilities of the position; and

(iii) Performance of the regulated entity, the specific employee, or one of the entity’s significant components with respect to achievement of goals, consistency with guidance and internal rules of the entity, and compliance with applicable law and regulation.

(2) *Comparable*—compensation that, taken in whole or in part, does not materially exceed compensation paid at institutions of similar size and func-

tion for similar duties and responsibilities.

Regulated entity means the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; or any Federal Home Loan Bank; the term “regulated entities” means, collectively, the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; and any Federal Home Loan Bank.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, (12 U.S.C. 4501 *et seq.*), as amended by the Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110-289, 122 Stat. 2654 (2008).

§ 1230.3 Prohibition and withholding of executive compensation.

(a) *In general.* The Director may review the compensation arrangements for any executive officer of a regulated entity or the Office of Finance at any time, and shall prohibit the regulated entity or the Office of Finance from providing compensation to any such executive officer that the Director determines is not reasonable and comparable with compensation for employment in other similar businesses involving similar duties and responsibilities. No regulated entity or the Office of Finance shall pay compensation to an executive officer that is not reasonable and comparable with compensation paid by such similar businesses involving similar duties and responsibilities. No Enterprise in conservatorship shall pay a bonus to any senior executive during the period of that conservatorship.

(b) *Factors to be taken into account.* In determining whether compensation provided by a regulated entity or the Office of Finance to an executive officer is not reasonable and comparable, the Director may take into consideration any factors the Director considers relevant, including any wrongdoing on the part of the executive officer, such as any fraudulent act or omission, breach of trust or fiduciary duty, violation of law, rule, regulation,